

IN THE CIRCUIT COURT FOR FREDERICK COUNTY, MARYLAND

-----X  
:  
STATE OF MARYLAND               :  
:  
                v.                 :  
:  
ABE ARJUN MALLIK,               :  
:  
                Defendant.       :  
:  
-----X

Criminal No. 10-K-16-059271

JURY TRIAL

Frederick, Maryland

June 1, 2017

IN THE CIRCUIT COURT FOR FREDERICK COUNTY, MARYLAND

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STATE OF MARYLAND :  
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 v. : Criminal No. 10-K-16-059271  
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 ABE ARJUN MALLIK, :  
 :  
 Defendant. :  
 :  
-----X

Frederick, Maryland

June 1, 2017

WHEREUPON, the proceedings in the above-entitled  
matter commenced

BEFORE: THE HONORABLE MICHAEL M. GALLOWAY, JUDGE

APPEARANCES:

FOR THE STATE:

JOYCE KING, Esq.  
Assistant State's Attorney  
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FOR THE DEFENDANT:

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For the State:

(None)

For the Defendant:

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MARKED

RECEIVED

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(None)

For the Defendant:

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P R O C E E D I N G S

THE CLERK: All rise. The Circuit Court for Frederick County is now in session. The Honorable Michael M. Galloway presiding.

THE COURT: Good morning. Be seated please. All right. Let's bring in the jury.

MS. CHOI: Your Honor, preliminarily, Your Honor, I believe we have some -- preliminarily, Your Honor, I have a motion. If I may approach at this time? For the record, I'm providing a copy for the State.

Your Honor, at this time the defendant would move for a mistrial based on the information that I just provided to Your Honor with regard to the first date of the jury trial in which one of the prospective jurors sent me a message yesterday afternoon and as soon as I received it I did send it to Madam State, Joyce King. And the substance of that message was that pursuant to the first day of the trial, Your Honor, apparently there was another three-day jury trial set and the defendant in that different jury trial actually fled and it's my understanding that Judge Nicklas then instructed or provided information to the prospective jury pool that the police or the law enforcement would have to go and find the defendant and, in order for the trial to go forward.

So at that point the jurors decided that maybe they were going to be relieved, but then they were called back and

1 told that the three-day jury trial was going to go forward and  
2 apparently they were whispering amongst the jury pool,  
3 believing that when they got called into this particular jury  
4 trial, Abe Mallik, they believe that it was this defendant who  
5 had fled the scene and it was this defendant who was caught and  
6 brought back and that the three-day jury trial would then go  
7 forward.

8           So as a result of that taint, Your Honor, the  
9 defendant has to preserve the record, obviously. We do believe  
10 that there is a taint in the jury pool and the actual jurors  
11 that were chosen at this time and as such that would be the  
12 basis for the defendant's request for a mistrial.

13           MS. KING: And, Your Honor, the State believes that a  
14 curative instruction to the jury instructing them that this  
15 defendant was not the who fled, obviously has been here the  
16 entire time. We've voir dired each of these, our sitting panel  
17 and asked them if they had, could be fair and impartial. They  
18 all agreed that they could and there were no other bases for  
19 them to doubt that. So the State believes that a curative  
20 instruction would suffice.

21           THE COURT: All right. I'm going to give an  
22 instruction to the jury and then I will ask them a couple of  
23 questions. And then depending on their response, I'll rule on  
24 Ms. Choi's motion. Let's bring in the jury.

25           MS. KING: Did Your Honor want to do the defense's

1 motion for judgment of acquittal before we brought in the --

2 MS. CHOI: Do we, should we do that, Your Honor? I  
3 thought, I thought that was what was in front of you is --

4 THE COURT: We'll do that at the bench.

5 MS. CHOI: Oh.

6 MS. KING: Okay, thank you, Your Honor.

7 THE COURT: Let's bring the, I want to deal with this  
8 issue first.

9 (Discussion off the record.)

10 (The jury entered the courtroom.)

11 THE COURT: Ladies and gentlemen, there's something I  
12 need to address with you this morning. It was brought to my  
13 attention today by counsel that something happened yesterday,  
14 something that was communicated to the entire pool of people  
15 that were brought in for jury selection on Tuesday that  
16 something occurred which I need to talk to you about.

17 What triggered this is that counsel was sent an e-  
18 mail from someone who was in the pool of people. That  
19 individual happened to be an attorney and she felt that counsel  
20 should be made aware of this and then counsel brought it to my  
21 attention this morning. This message says, "Yesterday I was on  
22 the jury panel for the case, but my number was too high, so I  
23 was not addressed prior to the jury being selected. As an  
24 attorney, I feel obligated to share with you something that  
25 happened that I fear may have influenced the jury.

1           "Yesterday morning, one of the judges came in to  
2 address the prospective jurors. He thanked us for our service  
3 and apologized that so many of us had to be called. He said a  
4 three-day felony trial was set in this courtroom, but the  
5 defendant had not shown up, so the case was not going forward.  
6 He referred to how the police were going to have to go out and  
7 get the defendant. There was chatter all day among the  
8 prospective jurors about how this defendant had fled. Then  
9 when we were called up for your trial, and the judge said it  
10 would be a three-day trial, there was a lot of discussion that  
11 this was the case that the judge had been talking about."

12           All right. Now how many heard this? Anybody? Okay.

13           THE JURY: From the judge? We heard it from the  
14 judge.

15           THE COURT: Right. From, from, from the judge?

16           JUROR: But didn't hear, I didn't hear any  
17 discussion.

18           THE COURT: Now how many people thought when you were  
19 picked for this jury that that individual who fled may have  
20 been this defendant?

21           THE JURY: No. No. No.

22           THE COURT: Anybody think that?

23           JUROR: It was made very clear that that was not  
24 going to happen today, that trial.

25           THE COURT: Okay.



1 JUROR: It was a different judge.

2 THE COURT: So nobody thought that Mr. Mallik was the  
3 person that was --

4 JUROR: No.

5 THE COURT: -- being referenced?

6 JUROR: No, sir.

7 THE COURT: All right.

8 JUROR: Because he said it wasn't going to take place  
9 today.

10 THE COURT: Okay.

11 JUROR: Or that day.

12 THE COURT: Well, my, my instruction is simply this.  
13 Based upon my question, your response, anyone influenced in any  
14 way by what they heard as far as this case is concerned?

15 JUROR: From the other judge?

16 THE COURT: Yes.

17 JUROR: No.

18 JUROR: No.

19 THE COURT: Okay. I see everyone shaking -- there's  
20 no one who felt they were influenced by what they had heard?

21 JUROR: No.

22 THE COURT: All right. I'm satisfied that this jury  
23 can be fair and impartial, that there really has not been any  
24 damage because everyone indicates that they never thought it  
25 was the defendant in this case who had been described by the

1 other judge. Very good.

2 MS. KING: Thank you, Your Honor.

3 MS. CHOI: And if we could approach on that motion?

4 (Bench conference follows:)

5 MS. CHOI: Your Honor --

6 THE COURT: Wish to be heard?

7 MS. CHOI: Yes. The defense would move for a  
8 judgment of acquittal based on insufficient evidence of all the  
9 counts involved, Your Honor, with regard to the arguments that  
10 the defense has. The State has not proven its case-in-chief at  
11 this point with regard to Counts 1 through 6 as to whether or  
12 not --

13 MS. KING: One through eight.

14 MS. CHOI: One through eight with regard to whether  
15 or not the defendant was in knowing possession of the child  
16 pornography and with regard to Counts 9 through 11, there has  
17 been a lot of information with regard to the dates involved in  
18 that situation as well and we do not believe that he knowingly  
19 possessed the child pornography at this juncture and that  
20 there's insufficient evidence to support that.

21 THE COURT: Ms. --

22 MS. KING: And --

23 THE COURT: -- King?

24 MS. KING: -- thank you, Your Honor. We believe that  
25 there is an abundance of evidence in the light most favorable

1 to the State, both circumstantial and direct evidence that the  
2 defendant did knowingly possess. As to knowingly, the  
3 instruction states that knowing as to the character and the  
4 contact, we believe that because the defendant admits that  
5 these are his e-mails, the IP address go to his home, there is  
6 consistency between the nature in his e-mails, the images and  
7 consistency with that to the laptop with other pornography was  
8 testified to had been viewed and most recently used. That the  
9 defendant was a primary user and there was consistency also as  
10 to the user names. We believe that that is an abundance of  
11 evidence that the counts should go to the trier of fact.

12 THE COURT: All right. At this juncture I'm required  
13 to resolve all inferences in the light most favorable to the  
14 State and based upon that, I believe there's sufficient  
15 evidence to go to the fact-finder. I will deny the motion.

16 MS. KING: Thank you.

17 (Discussion off the record.)

18 (Bench conference concluded.)

19 THE COURT: All right. Let the record reflect that  
20 all of the jurors, one through 14, are present today. All  
21 right. Let's proceed.

22 MS. CHOI: All right, Your Honor, the defense would  
23 call Mr. Abe Mallik to the stand.

24 ABE MALLIK

25 the defendant, having been first duly sworn, was examined and

1 testified as follows:

2 DIRECT EXAMINATION

3 BY MS. CHOI:

4 Q Mr. Mallik, please state your full name.

5 A Abe Arjun Viswamitra Mallik.

6 Q Prior to your testifying, do you understand that you  
7 have the Fifth Amendment right that gives you the right to not  
8 testify --

9 A Yes, I do.

10 Q -- against yourself? And did we discuss that right?

11 A Yes, you did.

12 Q And knowing that you had this right, no one can force  
13 you, the prosecutor, the judge, myself, or anyone else, for you  
14 to take the stand and actually testify. At this time, do you  
15 waive your right to your Fifth Amendment right --

16 A I do.

17 Q -- to remain silent?

18 A I do.

19 Q All right. Mr. Mallik, is it okay if I call you Abe?

20 A Please do, yeah.

21 Q All right. What is your ethnic background?

22 A Indian, from India.

23 Q Are you a U.S. citizen?

24 A Yes, I am.

25 Q And how old are you?

1 A 55.

2 Q Are you married?

3 A Yes, I am.

4 Q Do you have children?

5 A Yes, I do.

6 Q How many?

7 A I have two.

8 Q Two what?

9 A Two, two daughters.

10 Q Okay. And how old are they?

11 A One daughter is 24 and the other is 14.

12 Q And have you ever been charged with a crime?

13 A Never.

14 Q Have you ever been arrested for a crime?

15 A Never.

16 Q This is the very first time --

17 A Yes.

18 Q -- you have been charged?

19 A That's correct.

20 Q So I'm going to assume that you have no convictions  
21 whatsoever?

22 A None.

23 Q Where do you currently work?

24 A I work for the Food and Drug Administration within  
25 the Department of Health and Human Services.

1 Q All right. So you work for the Government?

2 A Yes, I do.

3 Q And what is your position there?

4 A I'm the manager of policy for personal property.

5 Q Okay. And then how long have you been doing that?

6 A The personal property, since 2014, but I've been with  
7 the Federal Government since 2005.

8 Q Okay. And now I'm just going to go right to the  
9 heart of the matter and this is about the allegations that you  
10 knowingly possessed child pornography.

11 A Okay.

12 Q All right? How do you feel about child pornography?

13 A I find it repulsive and offensive and that's why I'm  
14 here today, because I wanted to clear the, my name on that. So  
15 I find, personally, I find it very repulsive and offensive.

16 Q Did you at any time knowingly or inadvertently  
17 possess any of the images that are involved in Counts 1 through  
18 11?

19 A No.

20 Q Did you view any of the images that are involved in  
21 Counts 1 through 11?

22 A No, I did not.

23 Q Did you own any of the images that are involved in  
24 Counts 1 through 11?

25 A No, I did not.

1           Q     Did you view any of the other images that have been  
2 admitted into evidence?

3           A     No, I did not.

4           Q     Did you understand, now that you've seen those  
5 images, did you understand prior to that the nature or the  
6 character or the content of those images?

7           A     No, I did not.

8           Q     Did you ever have a hard copy collection of any kind  
9 of child pornography?

10          A     Never.

11          Q     Did you keep any digital copies of child pornography?

12          A     Never.

13          Q     Did any of your personal computers, blackberries,  
14 tablets, blueberries, other than the Acer, did you have any  
15 kind of child pornography in any of those devices?

16          A     Never, not even on the Acer, because as far as I knew  
17 they had nothing on it.

18          Q     Okay. You didn't know that --

19          A     No.

20          Q     -- they had it until --

21          A     Correct.

22          Q     -- the results? Okay.

23          A     Correct.

24          Q     Now with regard to your storage devices, all of those  
25 little thumb drives --

1           A     None of them --

2           Q     -- disks, did you have any kind of child pornography  
3 that you knew of --

4           A     Never --

5           Q     -- or may have inadvertently kept?

6           A     No.

7           Q     Okay. Did you even have access to child pornography  
8 at the home?

9           A     No, I don't even know how to get to, to the sites, so  
10 never, no.

11          Q     Okay. Now with regard to your health, I know that  
12 this has been very taxing, do you suffer from any conditions?

13          A     I do. I have vertigo, so vertigo, I'm not sure if  
14 people know what vertigo is, but your head spins and you, the  
15 whole, you basically lose your sense of stability. So it's  
16 very difficult to explain, but it, it, there's different stages  
17 of --

18               MS. KING: Objection --

19               THE DEFENDANT: -- vertigo that I get.

20               MS. KING: -- Your Honor.

21               THE DEFENDANT: But, yes --

22               MS. KING: This is --

23               THE DEFENDANT: -- so I suffer from vertigo.

24               MS. KING: Objection, Your Honor. Speculation. He's  
25 not a doctor. He can't, he can describe what he experiences,



1 but --

2 MS. CHOI: Okay.

3 MS. KING: -- but he can't --

4 THE DEFENDANT: Correct. I was just, I'm sorry,  
5 Madam State, I was, I was explaining what I experienced was  
6 dizziness, nausea, the room spinning, those are the symptoms  
7 that I have.

8 BY MS. CHOI:

9 Q Okay. Any other health conditions that we should be  
10 aware of?

11 A Primarily vertigo, I think, would be the, the primary  
12 one.

13 Q Okay. Now with regard to your work history, what is  
14 your position again?

15 A I'm the manager of personal property.

16 Q Okay. And, and you transferred into that position  
17 when?

18 A In 2015, October.

19 Q Okay. And prior to that, where were you?

20 A I was at the department level, so I moved to the FDA  
21 in October 2015 from the department level, basically the same  
22 title, same position --

23 Q Okay.

24 A -- but I moved from high up to, to a sub-agency  
25 within the Department of Health and Human Services.

1 Q And why did that happen?

2 A Because a position was available and so I figured,  
3 you know, this was more convenient for me so, yeah, I took that  
4 position.

5 Q Okay. Prior to your current position, did you have a  
6 lawsuit, a litigation against --

7 A Yes, I did.

8 Q -- your employer? Okay. And what was that, what was  
9 the basis for that lawsuit?

10 A That was, the lawsuit was based, the basis for the  
11 lawsuit was racial discrimination.

12 Q Okay. And who was the firm that represented you?

13 A You were.

14 Q Okay.

15 A You and your husband were the firm, yes.

16 Q Okay. And, and pursuant to that lawsuit, what was  
17 the end result of that?

18 A I prevailed and, and the Federal Government  
19 actually --

20 MS. KING: Objection.

21 THE DEFENDANT: -- paid me.

22 BY MS. CHOI:

23 Q What, what --

24 MS. KING: If we could stop him before --

25 MS. CHOI: Okay. Okay.

1 BY MS. CHOI:

2 Q So with regard to the lawsuit, you prevailed?

3 A Correct, I prevailed.

4 Q And did the Government, the defendant, did they enter  
5 into a settlement agreement?

6 A They did.

7 Q Okay. And the basis was racial discrimination?

8 A That's correct.

9 Q All right.

10 MS. CHOI: Your Honor, if I may approach the witness  
11 at this time and, for the record, have provided a copy to the  
12 State. This is our evidence related to, with regards to --

13 MS. KING: I'm going to object. If we could  
14 approach?

15 MS. CHOI: Okay.

16 (Bench conference follows:)

17 MS. CHOI: I don't find the actual setting of the --

18 MS. KING: This --

19 MS. CHOI: -- this title page.

20 MS. KING: -- this title page is hardly, I mean it's  
21 mischaracterizing the, what's contained in the settlement, so I  
22 would ask that be removed.

23 MS. CHOI: It's not a title page, but that's fine.

24 MS. KING: It says settlement --

25 MS. CHOI: We can just pull it out.

1 MS. KING: -- and fee where Mr. Mallik --

2 MS. CHOI: Well, that's what it was.

3 MS. KING: Well --

4 MS. CHOI: But, okay, I'll continue to cross-examine  
5 him on this.

6 MS. KING: Okay.

7 MS. CHOI: Should we just rip it off? Okay. I can  
8 rip off that page.

9 (Bench conference concluded.)

10 BY MS. CHOI:

11 Q Mr. Mallik, I'm showing you what's been marked as  
12 Defendant's Exhibit 1. The parties have already stipulated to  
13 it.

14 THE COURT: The is on.

15 BY MS. CHOI:

16 Q What is that?

17 THE COURT: The husher is on.

18 THE BAILIFF: Pardon me.

19 MS. CHOI: Okay. We're back on.

20 BY MS. CHOI:

21 Q All right. So, Mr. Mallik, I'm showing you what's  
22 been marked as Defendant's No. 7 actually. Can you describe  
23 what that is?

24 A This is the settlement agreement between Health and  
25 Human Services and myself to settle the racial discrimination

1 lawsuit.

2 Q Okay. And as a result of this lawsuit, what, if  
3 anything, did you feel in terms of being labeled when you went  
4 back to work?

5 A I was labeled as, as a whistleblower, as a  
6 troublemaker.

7 Q And, and, in fact, are you still at the same  
8 employer?

9 A Yes, I am.

10 Q Okay.

11 MS. CHOI: Your Honor, if I may publish this to the  
12 jury, if I may have some leeway?

13 MS. KING: No objection.

14 BY MS. CHOI:

15 Q And the amount of the settlement, Mr. Mallik, how  
16 much was that?

17 A It was \$51,000 and 400 or something.

18 Q Was it \$51,441?

19 A That's, that's correct.

20 Q Okay. And after the settlement and the lawsuit, did  
21 you sense, did you actually make a lateral move?

22 A Yes, I did.

23 Q Okay. And did you then start experiencing some  
24 trouble with your current position?

25 A Yes, I did.

1           Q     All right. And can you describe for me what exactly  
2 this chart is all about? You can come up here.

3           THE COURT: Can everyone see that?

4           MS. CHOI: The prosecutor can't.

5           (Discussion off the record.)

6           BY MS. CHOI:

7           Q     Okay. So can you please describe for me where you  
8 were during the lawsuit?

9           A     Certainly. I was up here at the Office of the  
10 Secretary, so essentially the Office of the Secretary provides  
11 support to all of the agencies within the Health and Human  
12 Services.

13          Q     And how many agencies are there?

14          A     There's 12 to 14 agencies.

15          Q     Okay. And then after the lawsuit, where did you  
16 land?

17          A     So after the lawsuit, FDA had actually opened a  
18 position exactly what I was doing, which is the management of  
19 policy. So I applied for that job and obviously I was the most  
20 qualified person for the job and I got the job through merit  
21 selection. So they actually post job and applied for it and  
22 got the job. So I moved to the FDA in October of 2015.

23          Q     When you say that statement, that you're the most  
24 qualified, is it because it was you were at the top?

25          A     Correct.

1 Q And, and, and --

2 MS. KING: Objection to leading.

3 MS. CHOI: Okay.

4 THE DEFENDANT: Okay. So, so --

5 BY MS. CHOI:

6 Q What does that mean?

7 A So when I was at the Secretary, at this level, at the  
8 department level, I actually wrote the policy manual for the  
9 entire department, so --

10 Q The entire department --

11 A Correct.

12 Q -- of Health and Human Services?

13 A So this manual, the 300-page manual that I wrote, all  
14 of these 14 agencies had to follow. So when I created this  
15 manual, I actually had a representative from each of the  
16 agencies sit with me so it was a work group, so --

17 Q A task force?

18 A Task force. So we all sat together and created that  
19 manual so there was no, no confusion and everybody would be  
20 able to buy in. So that's what I had done prior to moving  
21 here, so I knew all of the people across.

22 Q Okay. So when did you start having problems when you  
23 got to FDA?

24 A So when I got to the FDA, I found out that my  
25 supervisor did not know anything of my personal property.

1 So --

2 Q And who was your supervisor?

3 A His name is James Sawyer. So I mean I thought that  
4 his supervisor who picked him didn't realize because his  
5 supervisor would not know as much about personal property as I  
6 did. So I pulled him aside and I said, oh, by the way, you  
7 know this guy doesn't know anything about personal property?  
8 And the response was --

9 MS. KING: Objection.

10 BY MS. CHOI:

11 Q Okay. Without repeating the objection --

12 A Sure.

13 Q -- I mean without repeating what somebody else said,  
14 what did you do then after that conversation?

15 A I, I was told that, you know --

16 MS. KING: Objection.

17 THE DEFENDANT: Okay. So I, so I was, I was hired to  
18 compensate his lack of knowledge.

19 BY MS. CHOI:

20 Q Okay. And so at this --

21 A That's why I was hired.

22 Q So that we're absolutely clear, James Sawyer is your  
23 immediate supervisor --

24 A Correct.

25 Q -- and did he have a relationship with your second --



1 A Yes.

2 Q -- supervisor?

3 A So, so James Sawyer's and his supervisor are  
4 fraternity brothers.

5 Q And what kind of fraternity --

6 A I didn't know of that.

7 Q -- brothers? Like in America --

8 A Exactly, it's from a college.

9 MS. KING: Objection.

10 THE DEFENDANT: I don't remember the name of the  
11 fraternity, but they were African-American and they belonged to  
12 an African-American fraternity. And I didn't know that. So,  
13 and I didn't know all the little politics before I moved there.  
14 And after I went to his supervisor's supervisor, I was labeled  
15 as, as, as a troublemaker automatically.

16 MS. KING: Objection as to the labeling.

17 THE COURT: Overruled.

18 THE DEFENDANT: So, so essentially I immediately had  
19 two people not happy with me because I had pointed out that he  
20 didn't have the knowledge to be my supervisor much less.

21 BY MS. CHOI:

22 Q And when you bring up the fact that they were  
23 fraternity brothers because you testified that you went through  
24 the merits selection.

25 A Correct.

1           Q     Now did Mr. James Sawyer, your immediate supervisor,  
2 did he go --

3           MS. KING:  Objection.  Counsel is leading.

4           THE DEFENDANT:  No.  James Sawyer did not go through  
5 the merit selection.

6           THE COURT:  Wait, wait, wait, wait, overruled.

7           BY MS. CHOI:

8           Q     Okay.  So, okay, did he go through a merit selection  
9 for the position of being your immediate boss?

10          A     No, he did not.

11          Q     Okay.  And at some point he became your boss?

12          A     Correct.

13          Q     Okay.  Now the kind of problems, how long did it take  
14 since you started in October of 2015, what kind of problems --  
15 you don't have to elaborate too much, but how long did it last?

16          A     It lasted right through April when he put me on  
17 suspension the day after the raid, but essentially in October  
18 when I pointed out to James Sawyer's supervisor that he was not  
19 qualified.

20          Q     And what's his name?

21          A     Calvin Lawson.

22          Q     Okay.

23          A     So the minute I told Calvin Lawson, I didn't realize  
24 that they were very close fraternity brothers, immediately all  
25 hell broke loose.

1 Q And what do you mean by all hell broke loose?

2 A By, but all of a sudden, you know, I was, I was just  
3 being targeted for little things. For instance, my work shift  
4 was done at 3:30 and I had to go pick up my daughter from an  
5 afterschool activity. And so I left, you know, 3:45, I think  
6 is when I left. And we were in a meeting, the meeting was  
7 over, I think it was done and they were just talking about the  
8 weather. So the next day James Sawyer comes to me, you know,  
9 you cannot leave the room if I'm still sitting in the room.  
10 And I said --

11 MS. KING: Objection as to --

12 MS. CHOI: Okay.

13 THE DEFENDANT: So, so anyway, so --

14 MS. CHOI: Without repeating --

15 THE DEFENDANT: I'm not, I'm not going to repeat --

16 BY MS. CHOI:

17 Q Without repeating --

18 A -- what, what he said.

19 Q Okay.

20 A But, essentially, there were little things constantly  
21 that, that I was being targeted. And because of, of the  
22 previous lawsuit, actually kept turning the other cheek, so I  
23 was being more subservient, and I think the more subservient I  
24 was, the worse it was getting and at one point I was told to  
25 straighten out my daughter and have her, no --

1 MS. KING: Objection.

2 THE DEFENDANT: -- no afterschool activities.

3 MS. KING: He keeps --

4 MS. CHOI: Okay.

5 THE COURT: You can't, Mr. Mallik, you can't say what  
6 somebody told you.

7 THE DEFENDANT: Yes, sir.

8 BY MS. CHOI:

9 Q Okay. Was there a --

10 MS. CHOI: If we may approach, Your Honor? May we  
11 approach?

12 (Bench conference follows:)

13 MS. CHOI: Your Honor, there's going to be one  
14 statement in which he was actually threatened bodily harm and  
15 it was in a very excited state, so that would be non-hearsay  
16 because it would be the actual response that my client had  
17 pursuant to that threat and so I'm going to explore that a  
18 little bit. And I want to have a little bit of latitude with  
19 regard to that so I can lay the foundation that it is an  
20 excited utterance on Mr. Sawyer's part, having threatened  
21 bodily harm to Mr. Mallik.

22 MS. KING: Your Honor, this is --

23 MS. CHOI: It's relevant to the defense, Your Honor.

24 THE COURT: Well, I think it's relevant.

25 MS. CHOI: And it, I'll keep it shorter.

1 THE COURT: I'm sorry?

2 MS. CHOI: I'm going to keep it short.

3 MS. KING: It's still hearsay, Your Honor

4 THE COURT: Well --

5 MS. CHOI: It's not hearsay. It's an exception to  
6 the hearsay, Your Honor. It's an excited utterance. There's  
7 body language involved, there's fists up in the air. The  
8 actual statement, the verbal statements are threats. And it is  
9 the impact that Mr. Mallik had based on that.

10 THE COURT: State-of-mind? All right. I'll allow  
11 it.

12 MS. CHOI: Okay. Thank you, Your Honor.

13 (Bench conference concluded.)

14 BY MS. CHOI:

15 Q Now, Mr. Mallik, did there come a time when --

16 MS. KING: Counsel, can you sit or please --

17 MS. CHOI: Yes.

18 BY MS. CHOI:

19 Q Now, Mr. Mallik, did there come a time when Mr.  
20 Sawyer and you had a verbal altercation?

21 A Yes, we did.

22 Q And what, what kind of situation was it? Like how,  
23 how was his behavior, how was his mannerism?

24 A His mannerism was more like let's take it outside,  
25 you know, let's settle this man-to-man and I'm like, excuse me,

1 you know, I'm not the brawling person.

2 MS. KING: Objection as to what he's saying. That's  
3 not what counsel proffered.

4 MS. CHOI: Okay.

5 BY MS. CHOI:

6 Q Okay. So can you, did he raise his voice?

7 A He did, he raised his voice.

8 Q Did he gesture?

9 A He --

10 MS. KING: Objection as to leading.

11 THE DEFENDANT: Yeah, he raised his voice. He was  
12 very hostile and there was one particular conversation that  
13 comes to mind where I corrected him when he was in error  
14 following the personal property manual because I wrote the  
15 manual and I recognized that he was making a mistake. And  
16 instead of saying, well, thank you, and learning from it, he  
17 actually was offended and challenged me and he was screaming on  
18 the phone. Again, I'm not saying what he said, Madam State.

19 BY MS. CHOI:

20 Q You could say that. You can, you can state what he  
21 was screaming on the phone.

22 A Yeah, he, he was essentially -- so when I heard him  
23 screaming, I said, you know, and I was teleworking that day, so  
24 I was at home. So I didn't realize why he was that upset and I  
25 told him, I said, you know, would it make sense for us to meet

1 at work and we could just sit face-to-face and talk about this  
2 because it's a personnel matter obviously at this point. And  
3 then his response was, are you telling me that you're unable to  
4 telework and, if so, I'll remove the telework privileges from  
5 you. So that was his response. So I'm like, okay.

6 Q And was this still --

7 A He was very, very upset, very loud. He was screaming  
8 on the phone. And so, I mean, just to give you an idea of the  
9 hostility that I was facing with this gentleman and so I said,  
10 okay, no, I said I'm completely capable of having a phone  
11 conversation. I said, and he said, let's talk man-to-man. And  
12 I said, yeah, go right ahead.

13 And so I said, you know, since you initiated the  
14 call, why don't you go first? And then he just went off the  
15 deep end and he was screaming at me and I'm not going to repeat  
16 all of the words, Madam State.

17 Q You can repeat what you --

18 A I, I --

19 Q You can repeat what you heard.

20 A Yeah, and essentially, you know, he was saying, well,  
21 you think you're Mr. know it all and, and, on that, on those  
22 lines. So after he was done, he turns around and he says,  
23 okay, now --

24 Q Now tell, tell the jury in detail exactly what you  
25 heard because they need to know this part.

1           A     Okay. He essentially was telling me that I thought I  
2 knew more than he did, which was true. And then, you know,  
3 that I was showing him off and it was not my intent at all.  
4 And the way I viewed it was I was training him, showing him the  
5 correct way, because I wrote the manual. And the way he was  
6 receiving it was that I was basically belittling him and I was  
7 not. You know, this was policy. It's black and white. Either  
8 you're doing it right or you're not doing it right. And he was  
9 misinterpreting the whole thing, which was, was, was a problem,  
10 but that's when the, that's exactly why I offered to sit with  
11 him face-to-face and talk about this and he refused and he said  
12 let's do it on the phone.

13                So I, so essentially the phone call lasted a good 15  
14 minutes, you know, of just rage from his side. And part of the  
15 conversation was let's just take it out man-to-man. And I'm  
16 going you beating me up is not the solution. Obviously, he is  
17 more muscular than I am and that's not how you settle a point.  
18 I mean if he beats me up, it doesn't change the policy, you  
19 know, the policy is the policy.

20                So after the whole conversation was done, he turns  
21 around and he says, okay, now it's your turn, go. And I paused  
22 and I said, James, I've got nothing against you. And he said,  
23 what? And I said, no, I said I really, honestly, don't have  
24 anything against you. I said I have nothing, nothing to say.  
25 And there was this long pause and he says, I have a really bad



1 headache and he hangs up.

2 Q Now after that exchange, were you documenting all  
3 of --

4 A Yes, I was. So --

5 Q -- the incidents?

6 A So after that, after that instance, I started writing  
7 down every day everything he was doing and putting the date and  
8 the instances, the details of those instances and said, okay,  
9 these, this is what happened, this is how you reacted and this  
10 is what he did.

11 Q And that culmination of all of the documentation, did  
12 that end up becoming an e-mail?

13 A Correct. And there's one, one more point if I may  
14 bring up? So when I was at the department level, they do a  
15 performance evaluation every year for, for your work  
16 performance and it's on a scale of five, one to five, and five  
17 being the very best. For 10 months my rating was 4.67, almost  
18 excellent. Nobody usually gets the excellent because it's very  
19 difficult to prove that you're super excellent. So 4.67 is  
20 amazing.

21 So for 10 months, from January through October, I had  
22 4.67. So when I went to the FDA --

23 Q That's October 2015?

24 A Yeah, in January 2016 was when the evaluation was  
25 being done for the whole year, so James Sawyer gives me the

1 evaluation and he says you're getting a 3.0 for the whole year.  
2 And I said 3.0 for the whole year? I said I came here with  
3 4.67, so for a month and a half you're going to bring my whole  
4 year down to 3.0? I said what are you basing it on? What is  
5 your basis? Show me where, where I did anything wrong.

6 Q So you challenged him?

7 A Correct, I challenged him. And he said this is how I  
8 feel.

9 MS. KING: Objection.

10 BY MS. CHOI:

11 Q Okay. Now you can't repeat what he says.

12 A I can't repeat what he says, but his, his essential  
13 motive, he did not, he was not able --

14 MS. KING: Objection.

15 THE DEFENDANT: -- to provide any proof.

16 BY MS. CHOI:

17 Q Okay. There is an objection. I know this is  
18 upsetting. When there's an objection, you have to stop and  
19 then let the Judge rule and then you can go forward.

20 A Yes, sir.

21 THE COURT: Okay. Just do not tell us anything that  
22 was said.

23 THE DEFENDANT: Yes, sir.

24 BY MS. CHOI:

25 Q Okay. So let's fast-forward a little bit. So

1 between October when you started FDA and James Sawyer was your  
2 immediate supervisor, at some point in February do you recall  
3 the date when you actually sent an e-mail that contained a  
4 summary of all of the complaints that you had written about --

5 A Right. So --

6 Q -- (unintelligible).

7 A -- so once I realized that Mr. Lawson and Mr. Sawyer  
8 were fraternity brothers, I decided I had to go one step  
9 higher, obviously, because going to Mr. Lawson is not going to  
10 get me anywhere, so logical thinking was just to go one step  
11 higher and to take the complaint and actually document it and  
12 say, okay, look at everything he's doing, this is abusive  
13 behavior and here's the documentation of all of the abusive  
14 behavior he's putting me through and it's by date and it's not  
15 like one or two days. We're talking like months' worth of,  
16 every day. So I'm documenting all the big stuff.

17 Q Are you being overly sensitive --

18 A No, I'm not.

19 Q -- during that period of time though?

20 A You know, when I came from the Department level, I  
21 was actually trying to be very subservient. So I think that  
22 shows that the more subservient I was, the worse it was  
23 getting.

24 Q Okay. So February the 11th, is that when you  
25 actually reported --

1 A That's correct.

2 Q -- that entire summary of complaints?

3 A That is correct.

4 Q And that is the complaint from October 2015  
5 through --

6 A That's --

7 Q -- February the 10th?

8 A That is correct.

9 Q Okay.

10 A That is correct.

11 Q And so who did you send the e-mails to?

12 A I, I sent that to Deanna Murphy who is the supervisor  
13 of Kevin Lawson and I copied Kevin Lawson also.

14 Q So as a courtesy --

15 A Because --

16 Q -- you gave Kevin --

17 A Correct. So I didn't want to blindside him, but I  
18 wanted him to know, you know, hey, these are the events that  
19 happened and I actually addressed it to both of them.

20 Q And, and that, that e-mail on February 11, 2016, do  
21 you recall the last sentence of that e-mail?

22 A Yes. And that e-mail, in that e-mail that I sent, I  
23 very specifically wrote down, you know, please don't retaliate  
24 against me for sending this information. This is feedback so  
25 you know what's going on behind your backs because you're not

1 present. You're not witnessing everything he's doing. These  
2 are the list of events that occurred every day --

3 Q Were those the exact --

4 A -- please don't punish me for sending you these.

5 Q Were those the exact words from the last sentence you  
6 wrote?

7 A I don't remember the exact words --

8 Q Would, if I --

9 A -- Madam Counsel.

10 Q -- here's your document. Would that refresh your  
11 recollection?

12 A Yes, or I could read it from there.

13 MS. CHOI: If I may approach the witness, Your Honor?

14 THE COURT: Yes.

15 THE DEFENDANT: I see --

16 BY MS. CHOI:

17 Q Does that, does that refresh your recollection?

18 A Yes, if I can just read from here?

19 Q You cannot read from there.

20 A Okay.

21 Q What, what essentially did you write?

22 A I sincerely pray that this feedback will not be used  
23 against me, so, again, I don't remember the exact words, but  
24 essentially asking them not to punish me for, for, for sending  
25 this feedback --

1 Q So you used the word --

2 A -- and retaliating. It's --

3 Q -- pray?

4 A Correct, I did.

5 Q You used the word, please do not punish?

6 A Correct.

7 Q And please do not retaliate?

8 A Correct.

9 Q And that was the very last sentence in your --

10 A That is correct.

11 Q -- February 11, 2016 --

12 A And because my intent at that point was still not to  
13 pick a fight, basically hoping that they would talk to him and  
14 say, you know what, I think they're just going a little  
15 overboard, maybe you should pull back. That was my intent, you  
16 know.

17 MS. CHOI: Your Honor, if I may approach the witness,  
18 Madam Clerk, I want this marked as an exhibit.

19 MS. KING: The State objects.

20 THE COURT: Well, nothing has been offered yet,  
21 right?

22 (The document referred to was  
23 marked as Defendant's Exhibit No.  
24 8 for identification.)

25 BY MS. CHOI:

1           Q     So Mr. Mallik, I am going to show you what's been  
2 marked as Defendant's No. 8. Do you recognize this document?

3           A     Yes, this is the document that I sent to Mr. Lawson  
4 and Ms. Murphy.

5           Q     Okay. And is this a document that you produced?

6           A     Yes, I did.

7           Q     Okay. Are there any responses from somebody else in  
8 this document?

9           A     No.

10          Q     Okay. So these are all the e-mails and notes that  
11 you took?

12          A     That is correct.

13          Q     Okay. And this is an exact copy of the original e-  
14 mails --

15          A     That is correct.

16          Q     -- original notes that you took?

17          A     That is correct.

18          Q     And is a fair representation of what you produced?

19          A     That is correct.

20          Q     Okay. And it hasn't been altered in any way?

21          A     No, it has not.

22                MS. KING: Your Honor, I would move to admit  
23 Defendant's Exhibit 8 at this time.

24                MS. KING: The State objects.

25                (Bench conference follows:)

1 MS. KING: Your Honor, this is the document we  
2 discussed in the motion in limine. This document contains  
3 triple and double hearsay in the statements. He's trying to  
4 fit in statements from what, what other people are saying, that  
5 other people are saying. It's hearsay, it's entirely hearsay.

6 MS. CHOI: Your Honor, no, it's not. It's an actual  
7 exception to the hearsay pursuant to Rule 5-803(b) (24) which we  
8 argued prior to starting the jury trial that essentially in  
9 exceptional circumstance --

10 MS. KING: Can we turn the husher on?

11 MS. CHOI: Under exception circumstances, Your Honor,  
12 there are three requirements in which --

13 MS. KING: There's just -- I'm sorry, go ahead.

14 MS. CHOI: Yes. In which the statement could be  
15 admitted and that is that the statement is offered as evidence  
16 of a material fact which it is. It is motive with regard to  
17 how the hack happened and where it started. The statement is  
18 more probative on the point of which it is offered than any  
19 other evidence which a proponent can procure through reasonable  
20 efforts.

21 James Sawyer is the subject of that complaint and for  
22 him to come to court and be told to testify, and it is not a  
23 reasonable way to try to get that information in, Your Honor.  
24 And, see, the general purpose of the rules and the interest of  
25 justice will be served by the admission of the statement to



1 evidence. Now Mr. Mallik testified under oath that these are  
2 the e-mails that he created. These are the notes that he took  
3 throughout the October 15 all the way through February 2016  
4 timeframe in which those are present sense impressions of what  
5 it is that he's, he's experiencing at the time. And as such,  
6 with those three requirements, Your Honor, under the exception  
7 5-803(b)(24), the statement should be allowed in for the  
8 material fact of going toward the motive behind the, the, the  
9 hack.

10 MS. KING: And, Your Honor, may I respond?

11 THE COURT: Let me just ask a question.

12 MS. KING: Yes.

13 THE COURT: With regard to any statements in here  
14 which would be considered hearsay, what are we talking about?

15 MS. CHOI: It's the substance of the e-mails.  
16 They're direct quotes of what people are saying to him. That's  
17 what she's trying to get in. It's, they're, and it's also, the  
18 fact that it's, it's his, the entire thing is his prior  
19 consistent statement and counsel is trying to argue residual  
20 hearsay exception without proving the first element which is  
21 unavailability of all the hearsay declarants in this.

22 THE COURT: Give me an example of, of a statement  
23 that, that's in here.

24 MS. KING: It's where a lady explained, oh my God,  
25 here comes that creepy guy again. I mean --

1 MS. CHOI: That's, that's, that's actually in  
2 reference to him. They're calling him creepy.

3 THE COURT: Right.

4 MS. CHOI: They're not calling Mr. Sawyer --

5 MS. KING: Correct, but that's --

6 MS. CHOI: -- creepy.

7 MS. KING: That's the statement. That's the point is  
8 the statement --

9 THE COURT: But is, is --

10 MS. KING: -- of a --

11 MS. CHOI: And he's --

12 THE COURT: I mean that's not being offered for the  
13 truth of the --

14 MS. CHOI: No, we're not saying --

15 THE COURT: -- statement?

16 MS. CHOI: -- he's a creepy guy.

17 MS. KING: Yes, Your Honor, I mean --

18 MS. CHOI: No, we're not saying that. It's the  
19 impact that it's making and he is taking the notes.

20 MS. KING: James told me in the future I would have  
21 to sit with him. If anyone asked me a question, he does not  
22 know how to answer to, I would have to kick him, kick his or  
23 tap his leg or mine. I mean this goes exactly to what they're  
24 saying. This is a person that they're alleging is hacking him  
25 and they're trying to get that individual statement in. James'

1 gestured to close the door and follow the conversation. James,  
2 direct quote, "That was highly unusual. Deanna had no business  
3 talking to you directly. I am the director. She should be  
4 talking to me about what is necessary." I mean there are  
5 paragraphs of what the individual that they're trying to get  
6 this to taint.

7 MS. CHOI: Your Honor, clearly, the jury would have  
8 the ability to give it the weight that it is. It is made  
9 during the time. These are notes that were actually made  
10 during the time that it was happening. It is way before any,  
11 the criminal charges were actually filed a year before that.  
12 It had nothing to do with this case, Your Honor. This is what  
13 the notes are with regard to what he was thinking at the time.  
14 It is absolutely unreasonable to believe that James or any of  
15 those other individuals would come to court and have little  
16 mini-trials while confusing the jury. They can certainly give  
17 it the weight that they wanted to give and it does fall under  
18 the residual exception, Your Honor. This is a --

19 MS. KING: There are so many James said, Your Honor.  
20 They're using it to clearly get this individual, this hostile  
21 towards him. That's exactly what it's going to the substance  
22 of what is being said.

23 THE COURT: I'm sorry?

24 MS. KING: It's going to the substance of what is  
25 being said by the individual named James which is who they're

1 alleging -- I mean it's absolutely being offered for the truth  
2 of what is being said in these e-mails.

3 MS. CHOI: What is, what it's being offered for is  
4 the fact that there were incidents --

5 MS. KING: Your Honor, I'll direct your attention to  
6 this page right now.

7 THE COURT: Wait, wait a minute, don't --

8 MS. CHOI: There are incidents during the timeframe  
9 that had nothing to do with this criminal case in which he was  
10 just jotting down notes with regard to what he was experiencing  
11 at the time. That's all that it is, Your Honor. We're not  
12 asking for the truth of the matter asserted. We're not saying  
13 that he's creepy, that James is a jerk. We're not saying that,  
14 Your Honor, that these are notes being made at the time that is  
15 inherently authentic at the time. It's being offered because  
16 it does support a material fact that there was motive behind --

17 MS. KING: Correct.

18 MS. CHOI: -- defense strategy.

19 MS. KING: Which goes to the substance.

20 MS. CHOI: It, it is the defense theory that this  
21 person had it in for him, hated him so much that he would go  
22 out of his way to hire a hacker.

23 MS. KING: Which is why they want their statements  
24 in. Why he, why they want his exact statements in. And, Your  
25 Honor, I would direct your, to this page with bold, fully, all

1 capital letters of what this man is saying.

2 MS. CHOI: That would be called an excited utterance  
3 then, Your Honor.

4 MS. KING: We're really reaching into the realm of --

5 MS. CHOI: We're not. It's not, it's not hearsay.  
6 It falls under an exception.

7 THE COURT: Well, some of this is already testified  
8 to.

9 MS. CHOI: Yes. Excited utterance, Your Honor. Do  
10 you want him to testify to every single incident that's  
11 contained in the eight pages?

12 MS. KING: Well, that's in -- it's improper for, to,  
13 to submit a written prior consistent statement of the defendant  
14 as well.

15 MS. CHOI: It's not of the defendant.

16 MS. KING: The defendant just --

17 MS. CHOI: It is --

18 MS. KING: -- you just are countering your argument.  
19 You're just saying that these are --

20 MS. CHOI: No, no, no, it's --

21 MS. KING: -- notes of the defendant's recollection.

22 MS. CHOI: Right. Of what James Sawyer said.

23 MS. KING: So you are offering it to prove what James  
24 Sawyer said?

25 MS. CHOI: We'll let the Judge decide.

1 MS. KING: Yes.

2 THE COURT: I'm going to allow it.

3 MS. CHOI: Thank you, Your Honor. You can have that  
4 copy.

5 (Bench conference concluded.)

6 BY MS. CHOI:

7 Q So, Mr. Mallik, A, A, so these are the eight pages of  
8 the notes that you took throughout October 15th through  
9 February of 2016?

10 A That's correct.

11 Q And then this is the e-mail that you authored and  
12 sent on February 11, 2016?

13 A That's correct.

14 Q And that was before any of this criminal activity  
15 every happened?

16 A That is correct.

17 MS. CHOI: Your Honor, I would move to admit  
18 Defendant's Exhibit 8 at this time.

19 MS. KING: The State objects for the record.

20 THE COURT: Overruled. I'll admit Defendant's  
21 Exhibit 8.

22 (The document marked for  
23 identification as Defendant's  
24 Exhibit No. 8 was received in  
25 evidence.)

1 MS. CHOI: Your Honor, I would like to publish this  
2 to the jury at this time.

3 MS. KING: And, counsel, that cover page has been  
4 removed?

5 MS. CHOI: It has been removed. And I will direct  
6 the jury to look at the second to the last page, the first  
7 sentence after the first paragraph.

8 BY MS. CHOI:

9 Q So, Mr. Mallik, after you sent that e-mail, what was  
10 the atmosphere in which you were going back to work?

11 A It was extremely hostile, to be expected, and Mr.  
12 Lawson's response to my e-mail --

13 Q No, without repeating any responses, how did you feel  
14 going back there?

15 A I felt very uncomfortable.

16 Q Okay. Now let's direct our attention to what's going  
17 on with regard to your Internet connection, okay? So on, do  
18 you know around when in February did you experience slow  
19 connection?

20 A February 12th, so the day after I sent that e-mail.

21 Q What exactly happened on February the 12th?

22 A The, pages were not connecting, very slow, the  
23 Internet was extremely slow. So I called Comcast to find out  
24 why my Internet was so slow and the pages were not loading and  
25 I found out later on that actually when you close the browser,

1 if the browser doesn't close right away and it's still  
2 lingering, it's called hanging. So that happened also.

3 Q Okay. So let's go back a little bit further. Did  
4 there come a time that there was something unusual with regard  
5 to your home Wi-Fi network?

6 A Yes, there was.

7 Q And what was that unusual activity?

8 A Again, the Internet was slow and usually a sluggish  
9 speed would indicate that somebody is downloading something  
10 within your network and they're using up the bandwidth.

11 MS. KING: Objection. He's not an expert. He can't  
12 testify as to --

13 THE DEFENDANT: I'm not.

14 MS. CHOI: He's not, he's just, so --

15 THE DEFENDANT: I'm telling you what I experienced.

16 BY MS. CHOI:

17 Q Okay. You experienced slow loading of web pages?

18 A Slow, slow, slow Internet --

19 Q Okay.

20 A -- connection.

21 Q So what did you do next? Did you --

22 A So I asked --

23 Q -- try to see what devices are connected?

24 A Correct.

25 Q Okay.



1           A     So I asked my family members if they were on it and  
2 they were not. So out of curiosity, somebody, I felt somebody  
3 was using the bandwidth and I just didn't know who, so I logged  
4 into my router --

5           Q     Uh-huh.

6           A     -- to look at the devices and --

7           Q     What did you, so you were able to look at all the  
8 devices --

9           A     Correct.

10          Q     -- connected to your --

11          A     Connected to, to the Internet. And there was one  
12 device in there that I did not recognize because generally I  
13 name all the devices and I make them very simple, you know,  
14 just iPad, you know, and my wife's name or, you know, things  
15 like that so it's easy for me to remember. But this device was  
16 called living room. I don't name anything -- I know I didn't  
17 name anything living room. So I then checked with my wife and  
18 she wasn't, she didn't name anything. She didn't know how to  
19 do it anyway, so I checked with her. She, it wasn't her. It  
20 wasn't my daughter.

21                   So I went back and I said, you know what, we have  
22 somebody in here in our network that doesn't belong in here.  
23 And so --

24          Q     And what was the date around that time?

25          A     It was, it was the first week of February.

1 Q Okay.

2 A I don't remember the exact date, but then so, the  
3 mouse, I tried to right-click on the device and try, left  
4 clicked, you know, trying to boot the device out of the  
5 network.

6 Q And did it work? Nothing worked?

7 A It did not work.

8 Q Okay.

9 A And I turned off the router, turned it back on.

10 Q How many times --

11 A Did several --

12 Q -- did you do that?

13 A Several times.

14 Q All right. And that didn't work?

15 A Every time the device kept popping back up.

16 Q Okay. So you tried these things at, and then you  
17 testified that you actually called Comcast?

18 A That is correct. So on October 12th I had called  
19 Comcast. Now on the Comcast end, they, they were showing that  
20 the full speed is coming to my home, but when I go to the  
21 website, it's not there. So there's a website called  
22 speedtest.net. If you go to that website, it actually tells  
23 you the speed of your Internet and that's where I had gone to  
24 and that's what I was telling Comcast technician was this site  
25 is telling me I'm only getting 12 megs and then paying, I

1 think, for 100 megs or something like that. So and they were  
2 saying, no, you're getting the full speed from their side. So,  
3 obviously, between Comcast and me using it, somebody was eating  
4 it up and I didn't know --

5 Q Okay.

6 A -- who it was.

7 Q And you didn't know who it was?

8 A No.

9 MS. CHOI: All right. Your Honor, if I may approach  
10 the witness at this time? Madam Clerk, can I have this marked?

11 (The document referred to was  
12 marked as Defendant's Exhibit No.  
13 9 for identification.)

14 BY MS. CHOI:

15 Q Mr. Mallik, I'm showing you what's been marked as  
16 Defendant's Exhibit No. 9. Do you recognize this document?

17 A Yes, I do.

18 Q Okay. And what is it?

19 A This is the log from Comcast --

20 Q Uh-huh.

21 A -- that documents my telephone calls to them.

22 Q Okay. And when you look at the, the call logs, do  
23 you recognize on February the 12th that you made those calls to  
24 them?

25 A Yes, I did.

1           Q     Okay. And is that what you were explaining to the  
2 jury, that --

3           A     That, that is correct.

4           Q     -- the, all the acronyms and all the weird language  
5 is --

6           A     That, that is correct. Essentially all I was calling  
7 them about was that I didn't have the speed that I was paying  
8 for. So at some point I was thinking maybe it was Comcast that  
9 was not sending me the speed. So I'm paying for the speed,  
10 where is the speed, and they kept saying, you've got the speed,  
11 you know, we're sending you the speed. We can verify that the  
12 speed is coming to your house, but I wasn't able to see it.  
13 So, obviously, between me and them, somebody was obviously  
14 eating it up or --

15           MS. CHOI: Your Honor --

16           THE DEFENDANT: -- that's my assumption.

17           MS. CHOI: -- I would move to admit this. The  
18 parties have already stipulated.

19           MS. KING: No objection.

20           THE COURT: This is Defendant's Exhibit 9?

21           MS. CHOI: 9.

22           THE COURT: Defendant's 9 is admitted without  
23 objection.

24                                 (The document marked for  
25 identification as Defendant's

1                   Exhibit No. 9 was received in  
2                   evidence.)

3                   BY MS. CHOI:

4           Q       So, Mr. Mallik, you have this issue with the Internet  
5 at this point. It's not Comcast that's the problem. What kind  
6 of concerns did you have at that point?

7           A       I was, you know, my personal feeling at that time, I  
8 felt like there was a burglar in my house and I couldn't point  
9 a finger, like an invisible burglar, but I knew somebody was,  
10 was, was violating my personal space, like this foreign device  
11 that I saw, but I couldn't kick them out. I felt really  
12 helpless. And I was, when I had the conversation with Comcast,  
13 I was more convinced that there was somebody sitting on my  
14 network.

15          Q       And what do you do --

16          A       And that concerned me.

17          Q       -- online?

18          A       So I started searching to see if I can find a virtual  
19 private network because I do banking online and I didn't want  
20 this person to view my banking information. So I wanted some  
21 secure connection.

22          Q       And, and does anyone else use the Internet at your  
23 home?

24          A       No. I'm sorry, only my daughter does. My, I didn't  
25 follow the question.

1 Q And that how often --

2 A My daughter does, yeah.

3 Q -- how often does she use the Internet at home?

4 A Almost every day after she finishes homework. She  
5 likes to read fan fiction, which is stories that other children  
6 write and so, you know, so -- and she actually tries -- it's  
7 very different than when I was growing up, but the children  
8 these days actually create stories and other children create  
9 stories too and they compare stories.

10 Q And this is the fan fiction website?

11 A Correct. And there's another site called What Pad  
12 and I think, I'm not sure which one is which, but I know that,  
13 you know, she asks my wife and I and we were fine with that.

14 MS. KING: Objection.

15 BY MS. CHOI:

16 Q Okay. Without repeating what she says, and we can  
17 move on from that.

18 A Right. She, she, she writes stories on there.

19 Q Okay. So she's using the Internet?

20 A Correct.

21 Q And you're using the Internet?

22 A That is correct.

23 Q And you're banking online?

24 A Correct.

25 Q Okay. And with regard to your daughter, does she use

1 your computers?

2 A Yes, she does.

3 Q And does she use the Acer laptop --

4 A Yes, she does.

5 Q -- that is the offending computer in this case?

6 A Yes, she does.

7 Q Okay. Now what kind of a router do you have, once  
8 you realize that it's not Comcast's problem, something is going  
9 on, what kind of router do you have?

10 A I have the Asus router. It's A-S-U-S.

11 Q Okay. And when did you purchase that, if you  
12 remember?

13 A About 2014, I would think, and at that point I think  
14 I paid about a little over \$300 because it was supposed to be  
15 the best router out there at that point, so I paid a lot of  
16 money. There were other routers for like 50, \$60, but I wanted  
17 to pay more because I --

18 Q Okay.

19 A -- wanted it secure.

20 Q And, well, focus on your router. And so you got this  
21 router for \$300. Do you still have the same router?

22 A Yes, I do.

23 Q The same --

24 A It's not the same, not the same router, no.

25 Q Okay.

1           A     Same brand.

2           Q     What happened to the router that was involved in this  
3 very slow connectivity?

4           A     Right, so the, the, the device kept popping back up  
5 and then would disappear and pop back up again. And it kept  
6 happening over and over again so, obviously, I knew there was,  
7 there was somebody in my network and a, a person who was in  
8 there. So October 27th, all of a sudden I had no Internet. I  
9 logged in, there's nothing, you know, I turned the web page on  
10 and it comes up and it says it's not connected, it's not going  
11 anywhere. So, obviously, my first thing is Comcast cut off my  
12 Internet again. So my first phone call was to Comcast and  
13 said, hey, where is my Internet? And, you know, they, they  
14 said, oh no, you are getting Internet. And I said, no, I'm  
15 not. I said, look, I'm clicking on the web page and it's not  
16 going anywhere.

17                     So they said, oh, now do this, do that and, you know,  
18 turn the router on, turn the -- did all that stuff, still no  
19 Internet. And then they said unplug the router.

20                     MS. KING: Objection as to what they said.

21                     THE DEFENDANT: Okay. So what I did was I unplugged  
22 the, the connection to the router and connected directly to the  
23 Comcast modem and I had Internet. So the technician was saying  
24 it's not Comcast --

25                     MS. KING: Objection.



1           THE DEFENDANT: Okay. So, so they, I was able to  
2 deduce that it was not the Comcast Internet was there, the  
3 router wasn't just giving me the Internet.

4           MS. CHOI: Okay.

5           THE DEFENDANT: So I was able to identify it was the  
6 router and not the, not the Comcast.

7           BY MS. CHOI:

8           Q     Okay. So you had a router issue?

9           A     Correct.

10          Q     All right. And at that point you made a phone call  
11 to them, to the tech?

12          A     That's correct. So that timeframe I was actually  
13 experiencing severe vertigo and actually the day of the raid my  
14 vertigo was so bad I could not stand up.

15          Q     What was -- was that April 21, 2016?

16          A     April 21st, actually April 20th my vertigo was so bad  
17 that an hour after being at work, I went home sick. So I  
18 actually logged out sick on, on the 20th, the day before the  
19 raid, and all I did was sleep. So April 21st, my vertigo was  
20 so bad I was actually holding the walls to, to keep from  
21 falling down. And Detective Ron Raul, or Corporal Ron Raul  
22 was, was assigned to stand next to me and at one point I  
23 actually held his forearm to steady myself and sit down because  
24 I was so dizzy.

25          Q     Okay.

1           A     So when this phone call happened, the 27th, I was  
2 still experiencing vertigo. So I didn't call Asus tech support  
3 right away. I didn't call them on the 27th, I actually called  
4 them on the 29th and told Asus tech support, hey, you know, you  
5 need to fix this router, I paid a lot of money for this, reset  
6 the router, you know. And the tech support worked through the  
7 whole thing and turned it off, turned it back on and the whole  
8 process again and they were unable to do it. So --

9           Q     It was never --

10          A     -- which is --

11          Q     -- it was never repaired?

12          A     Which is level one and then they bumped me to level  
13 two and level two tried to fix the router and level, level two  
14 was not able, this is Asus technical support, they were unable  
15 to fix it either.

16          Q     Okay. And at, at some point, at the end of April,  
17 early May, did you have to purchase a new router?

18          A     That's correct.

19          Q     Okay.

20                MS. CHOI: If I may approach, Madam Clerk, to have  
21 this marked?

22                MS. KING: And, counsel, if you could remove the  
23 cover page?

24                MS. CHOI: Removed.

25                               (The document referred to was

1 marked as Defendant's Exhibit No.  
2 10 for identification.)

3 BY MS. CHOI:

4 Q And I'm showing you what's been marked as Defendant's  
5 No. 10. Do you recognize this?

6 A Yes, I do.

7 Q Okay. What is it?

8 A This is a lawsuit that Asus, between Asus and the  
9 Federal Trade Commission. So, essentially, Asus had a, a  
10 defect that they admitted to in this lawsuit.

11 Q And when, do you know when the lawsuit started?

12 A It started in 2014 and I believe they concluded at  
13 the end of February 2016.

14 Q So the router that you had was purchased in 2014?

15 A That's correct.

16 Q Which was the subject of this lawsuit?

17 A That is correct.

18 Q And then they actually ended up settling --

19 A That is correct.

20 Q -- with the FTC?

21 A For \$206 million.

22 Q Okay. And that was a public lawsuit and --

23 A Correct.

24 Q -- and notice?

25 A Correct.

1 Q And they actually settled in 2016, February?

2 A That is correct.

3 Q Okay. And this was the exact same time that you're  
4 having problems with this particular router?

5 MS. KING: Objection. Leading.

6 THE DEFENDANT: Exactly.

7 MS. CHOI: Okay.

8 MS. KING: Counsel --

9 THE COURT: Don't lead.

10 MS. CHOI: I won't lead.

11 BY MS. CHOI:

12 Q And do you know whether or not, what Asus is required  
13 to do pursuant to this lawsuit?

14 A They're, they're supposed to maintain --

15 MS. KING: Objection. Lack of foundation.

16 MS. CHOI: Oh, okay. I don't need to worry about  
17 that. I'm not going to ask that question, Your Honor.

18 THE COURT: All right.

19 MS. CHOI: I move to admit Defendant's No. 10 at this  
20 time. It's --

21 MS. KING: That's, State is not opposed to this  
22 summary.

23 MS. CHOI: It's been stipulated to, Your Honor.

24 THE COURT: Al right. Pursuant to the stipulation,  
25 Defendant's Exhibit 10 is admitted.

1 (The document marked for  
2 identification as Defendant's  
3 Exhibit No. 10 was received in  
4 evidence.)

5 MS. CHOI: Thank you, Your Honor. If I may publish  
6 this to the jury?

7 THE COURT: Yes.

8 BY MS. CHOI:

9 Q All right. So you now recognize after having had  
10 multiple conversations with Asus router tech, at some point  
11 your Asus router, what happened to it?

12 A Completely died.

13 Q And, and did you buy a new router?

14 A Yes, I did.

15 MS. KING: Objection. Leading.

16 THE DEFENDANT: Yeah.

17 MS. KING: Counsel --

18 BY MS. CHOI:

19 Q What did you do after that?

20 A Well, I had to get a new router.

21 Q Okay.

22 A The thing is I got the exact same router because I  
23 had done so much research on this router, I knew this router, I  
24 didn't want to get another different brand because then I'd  
25 have to learn everything about that. So I, I learned so much

1 about this router that I, I, I figured I'll stay with this  
2 because I know what it can and can't do.

3 Q And what essentially was the problem?

4 A The problem was there was -- Asus had an iCloud where  
5 people can actually store things on the Cloud. So Asus is a  
6 very secure router, but the Cloud, other Asus router  
7 users --

8 MS. KING: Objection.

9 THE DEFENDANT: -- can go to that Cloud.

10 MS. KING: It's lack of foundation.

11 MS. CHOI: This is --

12 MS. KING: This is not his personal --

13 MS. CHOI: But this is what he found throughout his  
14 research with regard --

15 THE DEFENDANT: Correct.

16 MS. CHOI: -- to the problems that he had trying to  
17 troubleshoot this --

18 THE DEFENDANT: Exactly.

19 MS. CHOI: -- problem, Your Honor. This is the  
20 information that he gathered personally, not anywhere else.

21 THE DEFENDANT: It's not hearsay.

22 MS. CHOI: Thanks.

23 THE COURT: Thank you, Judge Mallik.

24 THE DEFENDANT: Sorry, sir.

25 MS. CHOI: I think he's a little nervous, but he

1 wants to get this information out obviously.

2 THE COURT: Well, sure. All right. Now, Mr.  
3 Mallik --

4 THE DEFENDANT: Yes, sir.

5 THE COURT: -- why don't you do this. Why don't you  
6 describe the research that you did.

7 THE DEFENDANT: Thank you, sir.

8 MS. CHOI: Briefly.

9 THE DEFENDANT: Very briefly. So the Asus Cloud,  
10 once the, so everybody shares, if you look at the hexagon, so  
11 this would be the Cloud and everybody is attached to that.

12 MS. KING: Your Honor, I would object. This is  
13 technical --

14 THE DEFENDANT: Sorry.

15 MS. KING: -- he's not --

16 THE DEFENDANT: It's not technical.

17 MS. KING: -- an expert. Mr. Mallik, the Judge, when  
18 I say an objection, you are not instructed to talk, the Judge  
19 has to rule, do you understand that?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: All right. Are you saying that he's  
22 giving testimony that he doesn't have the competence?

23 MS. KING: Yes, Your Honor.

24 MS. CHOI: I can move on.

25 THE COURT: All right.

1 MS. CHOI: I'm going to move on.

2 BY MS. CHOI:

3 Q So you ended up purchasing a new router. At some  
4 point before that happened, before the crash of the router, you  
5 testified that you were looking to protect yourself.

6 A Correct.

7 Q Did you -- what did you do in order to figure out  
8 before the router crashed what you can do to protect your  
9 privacy?

10 A I did some research and I looked at some virtual  
11 private networks and one of them was the HMA that, that I  
12 found, one of the first ones that came up. And, essentially, I  
13 wanted to do my financial banking securely without having an  
14 intruder looking at my financial information online.

15 Q All right. So you're being charged with knowingly  
16 possessing child pornography. And if you were, assuming  
17 arguendo, that you were involved, would you find a virtual  
18 private network called Hide My Ass?

19 A No, I would not.

20 Q Okay. Are there different, did you, during your  
21 research, did you find different names --

22 A Correct.

23 Q -- and different companies that provided the same  
24 service?

25 A There were several of them.



1           Q     But you, in particular, purchased this name?

2           MS. KING:  Objection.  Leading.

3           THE DEFENDANT:  This was one of the first ones --

4           MS. CHOI:  No, it's not.

5           THE DEFENDANT:  -- that popped up.

6           MS. CHOI:  Wait, Mr., okay.  When the --

7           MS. KING:  Your Honor, if you could instruct  
8 counsel --

9           THE DEFENDANT:  Oh, sorry.

10          MS. KING:  -- to stop leading and testifying for the  
11 defendant?

12          THE COURT:  Do not lead, Ms. Choi.

13          MS. CHOI:  I will stop leading.

14          BY MS. CHOI:

15          Q     Okay.  So with regard to this software, okay, you,  
16 after you found it, what did you do?

17          A     I, actually when I purchased the software, I was  
18 still going through the vertigo process, so I didn't install it  
19 right away, plus I wanted to get a new laptop.  I, unlike my  
20 older generation, I, I, I'm not too fond of a small device  
21 because I can't see too well.  So I like to see, you know, on  
22 the bigger screen.  So I was planning on purchasing a 17-inch  
23 monitor, which is the Acer.  And the Acer was actually going to  
24 go on sale in mid-March, I think, sometime for \$199, so I was  
25 planning on buying the Acer.

1           So this is the same timeframe when I was going  
2 through the vertigo also, so I purchased the VPN, but I didn't  
3 install it right away because I was expecting to buy a new, new  
4 laptop.

5           Q     And when did you purchase the VPN?

6           A     February 9th.

7           Q     Okay. And, and do you recall when you actually ended  
8 up installing that?

9           A     I believe March 23rd.

10          Q     Okay. And then at some point between the time that  
11 you purchased the VPN did you then purchase a laptop?

12          A     March 21st I purchased a laptop.

13          Q     Okay. So once you purchased the, the laptop, were  
14 there any problems with that laptop?

15          A     After about a week after I purchased the laptop,  
16 primarily because of all of the intruders that I was thinking  
17 was on my network, I purchased a, a software called  
18 Malwarebytes just to double-check to see what was going on.  
19 And I ran Malwarebytes on the new computer, I think about a  
20 week after I purchased it --

21          Q     Okay.

22          A     -- and I found 200 malware that popped up.

23          Q     All right. And that was on the Acer laptop?

24          A     That is correct.

25          Q     And that was within days of the purchase?

1           A     Correct.  Correct.

2           MS. CHOI:  Okay.  Your Honor, if I may approach the  
3 Madam Clerk and the defendant.

4           (Discussion off the record.)

5           BY MS. CHOI:

6           Q     So, Mr. Mallik, I am showing you what's been marked  
7 as Defendant's 11.  Do you recognize that?

8           A     This is the receipt for the Malwarebytes.

9           Q     Okay.  And this is an exact copy, right?

10          A     That is correct.

11          MS. CHOI:  Okay.  Your Honor, I would move to admit  
12 Defendant's No. 11 at this time.

13          MS. KING:  No objection.

14          THE COURT:  Defendant's 11 is admitted.

15                   (The document marked for  
16                   identification as Defendant's  
17                   Exhibit No. 11 was received in  
18                   evidence.)

19          MS. CHOI:  If I could publish this to the jury?

20          THE COURT:  Yes.

21          MS. CHOI:  Thank you.  If I may approach the Madam  
22 Clerk and have this marked?

23                   (The document referred to was  
24                   marked as Defendant's Exhibit No.  
25                   12 for identification.)

1 BY MS. CHOI:

2 Q And I'm showing you what's been marked as Defendant's  
3 No. 12. Do you recognize that?

4 A Yes, I do.

5 Q What is it?

6 A It's a result of a scan from Malwarebytes on my  
7 mother-in-law's computer.

8 Q Okay.

9 A Laptop.

10 Q Okay. And you testified how many?

11 A 915 viruses. I thought 200 was a lot --

12 MS. KING: Objection as to mischaracterizing --

13 THE DEFENDANT: -- but this was --

14 MS. KING: -- what's stated.

15 MS. CHOI: I'm not asking about the document.

16 MS. KING: He's, he's mischaracterizing the evidence.

17 MS. CHOI: Okay. We can admit it and then explain  
18 it.

19 MS. KING: I mean I, I object to counsel trying to  
20 move this into evidence.

21 BY MS. CHOI:

22 Q So with regard to what you know with the knowledge  
23 that you have with regard to malware, viruses, pop-ups, when  
24 you did a scan of your mother-in-law's computer --

25 MS. KING: Objection. Assumes facts in evidence.

1 She hasn't laid the foundation that he has any understanding  
2 regarding what malware is, what pop-ups are, he doesn't have  
3 the --

4 THE COURT: Well, I think we all know what pop-ups  
5 are.

6 MS. KING: Or not a pop-up, but malware, as to what  
7 is being detected.

8 THE COURT: Lay your foundation.

9 MS. CHOI: All right.

10 BY MS. CHOI:

11 Q So what, what exactly did you do?

12 A The fact that I found 915 pops, I --

13 MS. KING: Again --

14 THE DEFENDANT: -- I took a --

15 BY MS. CHOI:

16 Q Do you know what pop is?

17 A Which is a potentially unwanted program.

18 THE COURT: Approach please, counsel.

19 (Bench conference follows:)

20 THE COURT: Are you are trying to elicit here?

21 MS. CHOI: I'm just trying to get this piece of  
22 document into evidence. It's, it's a screenshot of what he  
23 saw.

24 MS. KING: And he doesn't have the proper -- she  
25 can't lay the --

1 MS. CHOI: It's just a photograph.

2 MS. KING: If I could respond?

3 MS. CHOI: Yes.

4 MS. KING: Proper foundation. I would also argue  
5 that authentication. He hasn't testified when, where, how this  
6 was taken.

7 MS. CHOI: I can ask him.

8 THE COURT: Huh?

9 MS. CHOI: I can ask him when he took that  
10 screenshot.

11 THE COURT: When?

12 MS. CHOI: Yes.

13 THE COURT: And --

14 MS. CHOI: That's a screenshot --

15 MS. KING: Where, how --

16 MS. CHOI: -- of what he saw on his mother-in-law's  
17 computer. This is what he's testifying to.

18 THE COURT: All right. Let's, let's do this. Lay  
19 your foundation, do not have him testify as to the --

20 MS. CHOI: Yes.

21 THE COURT: -- content of this. Have him go through  
22 step-by-step.

23 MS. CHOI: Okay.

24 (Bench conference concluded.)

25 BY MS. CHOI:

1           Q     So, A, I'm showing you this document.  Rather than  
2 explaining what it is, when did the scan happen?

3           A     This scan happened a few days after I purchased the  
4 Malwarebytes.  I don't remember the exact date.  But I took a  
5 screenshot because it was so unusual.

6           Q     Okay.  So --

7           A     So that's what it was.

8           Q     -- is this document the screenshot?

9           A     That is correct.

10          Q     Okay.  And is this screenshot a photograph of fair  
11 and accurate representation of what it is that you saw that  
12 day?

13          A     Yes, it is.

14          Q     And when was the date again that you know of?

15          A     This was sometime between March and April, but I  
16 don't remember the exact date, but yeah.

17          Q     Okay.  And have there been any alterations, except  
18 for the, the exhibit tag, with regard to the screenshot?

19          A     No, there hasn't been an alteration.

20          Q     Okay.

21                MS. CHOI:  Your Honor, I would move into evidence  
22 Defendant's Exhibit 12 at this time.

23                MS. KING:  State objects.  I don't believe he's laid  
24 the proper foundation of what, what device that he was using,  
25 where this was conducted.  There's no dates or times as to the

1 method that how he produced this screenshot which is a partial  
2 of a screen.

3 MS. CHOI: Your Honor, it's a photograph. It is a  
4 screenshot. He said it was a fair and accurate representation  
5 of what he saw that day, sometime in February, on his mother-  
6 in-law's computer. If I have to ask him about the address and  
7 the location, exactly which room this computer was at, I can  
8 certainly lay more foundation.

9 THE COURT: All right. I'm going to admit it.  
10 Defendant's Exhibit 12 is admitted.

11 (The document marked for  
12 identification as Defendant's  
13 Exhibit No. 12 was received in  
14 evidence.)

15 MS. CHOI: Thank you, Your Honor. If I may publish  
16 this to the jury?

17 THE COURT: Yes.

18 BY MS. CHOI:

19 Q So, Abe, after you ran your mother-in-law's computer  
20 for a scan, did you do that for any other computers?

21 A Yes, I did, yeah.

22 Q Which computer?

23 A I ran it on the Acer, my Acer laptop.

24 Q Okay. And what was --

25 A And I --



1 Q -- the result?

2 A And I found 200 viruses on there or --

3 Q Okay.

4 A -- pop-ups, or whatever, just those things are.

5 Q All right. And once you found the 200 plus, what did  
6 you do next?

7 A I deleted, I told the program to delete all of them.

8 Q Okay. So did you --

9 A To clean it and actually ran it --

10 Q Okay.

11 A -- several, so on my laptop, on the Acer laptop that  
12 I, the new one, after I found those 200 viruses, I actually ran  
13 the program multiple times just to, it's like scrubbing your  
14 hands with soap, I wanted to just --

15 MS. KING: Objection as to characterizing what the  
16 program does. He can't speak to technical terms of what the  
17 program does. He doesn't have the proper qualifications for  
18 that.

19 MS. CHOI: I can just ask a different question, Your  
20 Honor.

21 THE COURT: All right.

22 MS. CHOI: Okay.

23 THE COURT: I'll sustain, the question is withdrawn.

24 MS. CHOI: Okay.

25 THE COURT: Proceed.

1 BY MS. CHOI:

2 Q So without explaining what the program actually does,  
3 did you just run the program?

4 A Several times.

5 Q Okay. Great.

6 A Yes, ma'am.

7 MS. CHOI: Now if I may approach Madam Clerk and have  
8 this marked.

9 (The document referred to was  
10 marked as Defendant's Exhibit No.  
11 13 for identification.)

12 BY MS. CHOI:

13 Q Mr. Mallik, I'm showing you what's been marked as  
14 Defendant's No. 13. Do you recognize that?

15 A Yes, I do.

16 Q And what is it?

17 A It's a receipt for the VPN.

18 Q Okay. And when was the purchase date, do you recall?

19 A February 9th.

20 Q Okay. And is this the exact copy of the receipt that  
21 you received?

22 A Yes, I did.

23 Q Okay.

24 A Yes.

25 MS. CHOI: Your Honor, if I may --

1 MS. KING: No objection.

2 MS. CHOI: Okay. Actually it's withdrawn. It's  
3 withdrawn, Your Honor.

4 BY MS. CHOI:

5 Q With regard to this receipt, did you at any time do  
6 anything with this receipt when, with the receipt once you were  
7 charged with a criminal case?

8 A No.

9 Q Did you provide a copy --

10 A I, I provided a --

11 MS. KING: Your Honor --

12 THE DEFENDANT: -- copy of this to Detective Elrod.  
13 No, I thought you were saying, in fact, altered the thing. I  
14 didn't alter it.

15 BY MS. CHOI:

16 Q No, no, no, no, no. What, if anything, did you  
17 provide a copy?

18 A I provided a copy of that receipt to Detective Elrod  
19 who was the lead --

20 Q Okay.

21 A -- detective at that time.

22 Q Okay. So, so with regard to the software, which  
23 computer or device did you install it on?

24 A I installed it on the Acer laptop.

25 Q Okay.

1           A     The new --

2           Q     Did you install it on any other devices?

3           A     No, I did not.

4           Q     How come?

5           A     Because I only needed one computer to do my financial  
6 transactions.

7           Q     Okay. Would there be a risk involved that you did it  
8 on other computers?

9           A     Yeah, because I don't use financial transactions on  
10 all the devices.

11          Q     Just your --

12          A     Just one, yeah.

13          Q     Okay. Now let's fast-forward a little bit to March,  
14 I'm sorry, April 21, 2016, that morning. Were you at home?

15          A     Yes, I was.

16          Q     And you testified, I believe, you're suffering from  
17 vertigo?

18          A     Severe vertigo.

19          Q     Okay. And at that time, in early morning hours, what  
20 happened?

21          A     I, the doorbell rang. I actually thought my wife  
22 locked herself, locked herself out, so I literally had to hold  
23 the walls to, to come downstairs and I saw Corporal Ron Raul  
24 and Detective Elrod outside the door. And I still, I was going  
25 through severe vertigo and I wasn't even sure what they were

1 doing over there.

2 Q Okay.

3 A And so I could not comprehend, the whole instance did  
4 not register in my head as it was occurring. It was almost  
5 surreal because of my condition at that time.

6 MS. CHOI: Okay. Your Honor, if I may approach the  
7 witness?

8 BY MS. CHOI:

9 Q Abe, I'm showing you what's been marked as  
10 Defendant's Exhibit No. 14. Do you recognize that?

11 A Yes, I do.

12 Q What is it?

13 A These were the items seized from my home.

14 Q Okay. And is this a complete copy, a list of  
15 everything you received?

16 A Yes, it is.

17 Q And, and nothing has been altered from the copy?

18 A No, it has not.

19 MS. CHOI: Okay. Your Honor, I would move to admit  
20 Defendant's No. 14 at this time.

21 MS. KING: No objection.

22 THE COURT: Defendant's Exhibit 14 is admitted.

23 (The document marked for  
24 identification as Defendant's  
25 Exhibit No. 14 was received in

1 evidence.)

2 MS. CHOI: I'll publish this to the jury, Your Honor.

3 BY MS. CHOI:

4 Q So, Abe, with regard to everything that was seized,  
5 were all of your devices seized?

6 A That's correct.

7 Q Okay. And it's my understanding there's two  
8 documents that were seized?

9 A That is correct.

10 Q And what were those two documents?

11 A One was the receipt to the Acer laptop and the other  
12 was a receipt, a documentation of all my passwords.

13 Q Okay. And did you have any other passwords that were  
14 not on that Excel spreadsheet that the jury has already seen?

15 A No.

16 Q Everything was there?

17 A Correct.

18 Q Okay. And did they have an opportunity at that point  
19 to take a photograph of you?

20 A Yes.

21 Q Okay. Were you, during the raid, specifically during  
22 that time, did you in any way object or did you in any way try  
23 not to be cooperative?

24 A Absolutely not. I was very cooperative.

25 Q Okay.

1           A     And actually Detective --

2           Q     Without repeating anything anyone else said --

3           A     An ambulance was going to be called for me because I  
4 was so sick.

5           Q     Okay.

6           MS. KING:  Objection.  That's still hearsay, counsel.

7           MS. CHOI:  Well --

8           MS. KING:  As to what, he can't testify as to what  
9 people -- he's, Your Honor --

10          MS. CHOI:  May we approach, Your Honor?

11          (Bench conference follows:)

12          MS. CHOI:  Your Honor, I understand.  I can't control  
13 what my client says and I'm telling him not to repeat what  
14 other people say, and I'll do my best, but at the same time to  
15 continue to attack him because he doesn't know the rules of  
16 evidence --

17          MS. KING:  He does, he completely does know the rules  
18 of evidence.  He's saying --

19          MS. CHOI:  No, he doesn't --

20          MS. KING:  -- things aren't hearsay.

21          MS. CHOI:  -- because he's never testified ever in a  
22 court of law.  He's never been charged with a crime.  And so I  
23 will try to ask, but I will tell him not to repeat anything,  
24 but at the same time I get to ask --

25          MS. KING:  He may --

1 MS. CHOI: -- questions as to what happened to him  
2 during his case as a defendant and that's --

3 THE COURT: Well, the only --

4 MS. CHOI: -- counsel, if you could --

5 THE COURT: -- I mean he said an ambulance was going  
6 to be called for him.

7 MS. KING: Was going to be called.

8 THE COURT: So --

9 MS. CHOI: So I could, in response to --

10 THE COURT: -- I mean --

11 MS. CHOI: -- a conversation --

12 THE COURT: -- the only way he would, the only way,  
13 arguably, that he would know that would be if somebody said  
14 we're going to call an ambulance.

15 MS. KING: Correct, Your Honor.

16 MS. CHOI: Well, I can say --

17 MS. KING: You could --

18 MS. CHOI: -- after a conversation between you and an  
19 officer, what, if anything, did you say with regard to an  
20 ambulance? I can say that.

21 MS. KING: No.

22 THE COURT: Did he say --

23 MS. KING: No, he did not --

24 MS. CHOI: He said I don't want the ambulance.  
25 That's what he said.



1 THE COURT: Oh, okay.

2 MS. CHOI: That's a --

3 THE COURT: All right.

4 MS. CHOI: -- legit question.

5 THE COURT: All right. Okay.

6 (Bench conference concluded.)

7 BY MS. CHOI:

8 Q Mr. Mallik, without repeating anything that anyone  
9 else, you can repeat what you said, after a conversation with  
10 one of the officers with regard to an ambulance, what did you  
11 say?

12 A I declined the offer to have an ambulance come to the  
13 house.

14 Q Okay. Now after they seized all of your devices, and  
15 that was 27 in total?

16 A That's correct.

17 Q Okay. And, and they took the list of passwords?

18 A Correct.

19 Q What, if anything, did you do to help law enforcement  
20 with regard to this investigation?

21 A I voluntarily met with the lead detective, William  
22 Elrod, and the Frederick County sheriff's office with my  
23 attorney and brought the defective router with me and I asked  
24 Detective Elrod to add that to the evidence because that had  
25 the virus in it.

1 Q Okay. And at this interview did you sign your right  
2 to remain silent and go through all those formalities?

3 A Yes, I did.

4 Q Okay. And you testified that you brought your  
5 router?

6 A That's correct, I did.

7 Q Okay. What exactly did you do with your router?

8 A I brought the router with me and I also brought the  
9 case numbers that Asus technicians gave me when I made the  
10 phone calls and I provided this information to Detective Elrod.

11 Q So you provided him with actual telephone numbers?

12 A Telephone numbers, case numbers that was given to me  
13 by Asus when I made the calls to them regarding the defective  
14 router. So I gave him the, two case for tier one and tier two,  
15 there were two case numbers and I gave him the defective router  
16 also and I said this is the defective router, please add this  
17 to the evidence.

18 Q Okay. Now the day after the raid, which took place  
19 on April 21, 2016, what, if anything, happened to you the very  
20 next day?

21 A I was suspended from work.

22 MS. CHOI: If I may approach, Madam Clerk, Your  
23 Honor, to have an exhibit marked.

24 (The document referred to was  
25 marked as Defendant's Exhibit No.

1 15 for identification.)

2 BY MS. CHOI:

3 Q Mr. Mallik, I'm showing you what's been marked as  
4 Defendant's Exhibit No. 15. Do you recognize that --

5 A Yes, I do.

6 Q -- document? What is it?

7 A It's a, a letter from the FDA signed by James Sawyer.

8 Q Okay. And what is the date?

9 A April 22nd.

10 Q And is this the exact copy of the original that you  
11 received?

12 A Yes, it is.

13 Q And is it addressed to you?

14 A Yes, it is.

15 Q Is it addressed to your address?

16 A My home address, correct.

17 Q Okay. And it consists of how many pages?

18 A Two pages.

19 Q Okay. And do you recognize Mr. Sawyer's signature?

20 A Yes, I do.

21 MS. CHOI: Okay. Your Honor, I would move to admit  
22 into evidence Defendant's No. 15 at this time.

23 MS. KING: Objection. This document is hearsay.  
24 It's a letter from Mr. Sawyer. Mr. Sawyer is not present here  
25 in court.

1 MS. CHOI: Your Honor, this falls under that  
2 exception, 5-803(b)(20)(4) with regard to the genuineness of  
3 this, and it goes to the evidence of a material fact, the fact  
4 that it is on an FDA letterhead, it is dated, he recognizes the  
5 individual's signature, this is the exact same copy of the  
6 original that he received from a Federal agency.

7 MS. KING: Your Honor, the, it does, for, counsel is  
8 citing the residual hearsay exception rule and, again, this  
9 declarant is not unavailable. She could have called him to  
10 court today.

11 MS. CHOI: The declarant is the very person that he  
12 is whistleblowing on.

13 THE COURT: I'll overrule.

14 MS. CHOI: Thank you, Your Honor. If I may publish  
15 this to the jury?

16 THE COURT: Defendant's Exhibit 15 is admitted.

17 (The document marked for  
18 identification as Defendant's  
19 Exhibit No. 15 was received in  
20 evidence.)

21 BY MS. CHOI:

22 Q So, Abe, now you are suspended on April the 22nd, the  
23 very --

24 A Uh-huh.

25 Q -- next day?

1           A     That's correct.

2           Q     And the newspaper, what, if any, public information  
3 was provided with regard to your criminal charges?

4           A     No, there was no notification anywhere about my  
5 criminal -- the raid was not reported in the newspapers.

6           Q     Okay. And so to your knowledge do you have any idea  
7 how Mr. Sawyer received information about your criminal case?

8           A     No, I do not.

9           Q     Okay. To this day do you now know or do you have any  
10 information with regard to how he found out about your criminal  
11 case?

12          A     I am not sure how he found out.

13          Q     And since April 22, 2016, what is your status with  
14 regard to your job?

15          A     I, I'm still suspended.

16          Q     With or without pay?

17          A     Without pay.

18          Q     Okay. And are you the primary breadwinner of your  
19 house?

20          A     Yes, I am.

21          Q     Okay. And do you still support your minor daughter?

22          A     Yes, I do.

23               MS. KING: Counsel, if you could stop leading?

24               BY MS. CHOI:

25          Q     Now with regard to the Gmail account, the

1 man.maryland@gmail.com, that is your account, correct?

2 A It is.

3 Q Okay. What is the primary purpose of that account?

4 A I have a rental property and I run the rental  
5 property, even when it's vacant, I run the ads in Craig's List.  
6 And Craig's List doesn't let you use the same e-mail address  
7 within a certain timeframe, so that's why I created that in  
8 addition to the ones that I use, so I'd be able to run the  
9 rental property advertisement on that Craig's List website.

10 MS. CHOI: Your Honor, if I may approach Madam Clerk  
11 to have an exhibit labeled?

12 (The document referred to was  
13 marked as Defendant's Exhibit No.  
14 16 for identification.)

15 MS. CHOI: Approaching the defendant.

16 BY MS. CHOI:

17 Q Abe, can you tell us what Defendant's Exhibit 16 is?

18 A Yes. This is a screenshot of all the ads I ran with  
19 the Maryland.man Gmail account within Craig's List. It gives  
20 you all of the dates that I ran the ads on that.

21 Q And this is a fair and accurate representation of the  
22 screenshot that you took?

23 A It is.

24 Q Okay. Do you even know the date?

25 A There's several dates on the side.

1 MS. CHOI: Okay. Your Honor, I move to admit  
2 Defendant's No. 16 at this time.

3 MS. KING: No objection.

4 THE COURT: Yes.

5 MS. CHOI: If I could publish this to the jury?

6 THE COURT: 16 is admitted.

7 (The document marked for  
8 identification as Defendant's  
9 Exhibit No. 16 was received in  
10 evidence.)

11 BY MS. CHOI:

12 Q So, Abe, you used this e-mail account. How often do  
13 you get on it?

14 A Not very often at all because when the unit is, is  
15 occupied, I would have no reason to go there. And you can look  
16 at the dates and say those are the dates when it's vacant, I  
17 would go in there and check to see if the Craig's List ad had  
18 posted.

19 Q Okay. So now you heard a lot of testimony from the  
20 State's witnesses. Do you know how many e-mails you had at any  
21 given time during, actually, during the period of February all  
22 the way through April?

23 A No, I would have no reason to go into that. There  
24 was one instance, like a few instances actually. I was looking  
25 for a company that would mow the lawn, an agency, so I ran, I

1 was actually looking, I was using one of those e-mails. I  
2 think it might be Maryland.male, but I was looking very  
3 specifically for a lawn mowing person for that rental property.  
4 So I may have used it, but I'm not, I'm not very sure.

5 Q Okay.

6 A But I rarely use that e-mail for, other than Craig's  
7 List.

8 Q Okay. Now did you at any point see any child  
9 pornography in that e-mail account?

10 A No.

11 Q Did you upload anything on March the 3rd --

12 A No.

13 Q -- that had child pornography?

14 A No.

15 Q Okay. Now with regard to all of the devices and  
16 electronically related items that were seized at the raid,  
17 there was a bunch of thumb drives storage. What is all that  
18 about?

19 A The, I, because of all the hacks and ransomware that  
20 you hear on the news, I like to back my devices up and so on a  
21 regular basis, that's why I had so many storage devices, I  
22 backed everything up from my laptop and my computers back onto  
23 the storage devices just to, just in case my, my laptop or PC  
24 is hijacked, I have a back-up. So all of the storage devices  
25 are essentially for backing up my laptops and computers.



1 Q Okay. Is there a current lawsuit pending with your  
2 employer?

3 A Yes, it is.

4 Q Okay. And, and when did you file that lawsuit?

5 A A few months ago.

6 Q And, and who does it involve?

7 A James Sawyer.

8 Q And, and was that prior to all the events that  
9 happened here?

10 A Yes.

11 Q Do you know around what date?

12 A I don't have the exact date --

13 Q Okay.

14 A -- Madam Counsel.

15 Q Do you have a year?

16 A 2016, this year, yeah.

17 Q 2016? And was that early on before this happened or  
18 after?

19 A There were, there were several dates, but after, yes.

20 Q After which date?

21 A Can you ask your question again?

22 Q So which lawsuit is, what lawsuit is pending against  
23 James Sawyer?

24 A Currently there's actually a lawsuit about the  
25 suspension.

1           Q     About your, okay. We're not talking about that  
2 lawsuit. Did you file another lawsuit prior to all of this  
3 happening?

4           A     The racial discrimination lawsuit.

5           Q     Okay.

6           A     Yeah.

7           Q     Okay. So not the 2014 settlement racial  
8 discrimination did you file anything else?

9           A     Yes.

10          Q     What did you file?

11          A     With the merit selection for, for James Sawyer.

12          Q     Okay. So you actually filed a lawsuit involving Mr.  
13 Sawyer?

14          A     Correct.

15          Q     And what year was that?

16          A     Actually, it was actually 2017 maybe, I'm not sure.

17          Q     This year?

18          A     I'm not very certain but, yes, it could be.

19          Q     Okay.

20          A     Yeah.

21          Q     Okay. So you're fighting back?

22          A     Yes, I am.

23          Q     Okay. So all of that is pending at this time?

24          A     That is correct.

25          Q     Okay. Did there come a time that you filed anything

1 else in 2014?

2 A Yes.

3 Q What did you file?

4 A I filed the, the racial discrimination against one of  
5 the staff members at HHS.

6 Q Okay. And that was a lawsuit in which the  
7 settlement --

8 A That's correct, I prevailed on that lawsuit.

9 Q Prevailed on that lawsuit. Okay. And so with regard  
10 to the suspension lawsuit, that had to be filed, obviously,  
11 after this case?

12 A Correct.

13 Q Okay. And that's still pending?

14 A Correct.

15 Q Okay. Now when was the last correspondence that you  
16 received from your employer with regard to your work status, do  
17 you know?

18 A March 31st.

19 Q Okay. And what is that status?

20 A If I may, there were, there were a sequence of  
21 notifications from, from the employer.

22 Q Are those all the same type of letters that was  
23 already in the --

24 A They're all the same type of letters.

25 Q Okay. So in the interest of time, I'm not going to

1 admit all of the --

2 A Sure.

3 Q -- the letters, but how many letters in total did you  
4 receive?

5 A So in, in December of 2016, I received a letter of  
6 suspension without pay and in January 2017, that letter was  
7 upheld. And on March 1, 2017, that letter was rescinded and  
8 then --

9 Q So rescinded, meaning --

10 A Rescinded means they took it back and then on  
11 March --

12 Q You would get paid?

13 A Correct, and then March 31st they said, okay, you're  
14 back on suspension again. Said it was essentially just a --

15 Q Back and forth.

16 A -- back and forth, up and down.

17 Q So for the March 30, for the March 31st indefinite  
18 suspension without pay, do you know who wrote that letter?

19 A James Sawyer did.

20 Q And with regard to the rescind of the suspension, who  
21 actually signed that letter?

22 A Calvin Lawson.

23 Q And Calvin Lawson is --

24 A Is the supervisor of James Sawyer.

25 MS. CHOI: Okay. Your Honor, if may approach the

1 witness? This is the March 1st letter.

2 (Discussion off the record.)

3 BY MS. CHOI:

4 Q So, Abe, I'm showing you what's been marked as  
5 Defendant's No. 17. Do you recognize that?

6 A Yes, I do.

7 Q Okay. What is it?

8 A This is the letter rescinding the suspension on March  
9 1st.

10 Q Okay. And, and is this the exact same copy of the  
11 original that you received?

12 A Yes, it is.

13 Q Is it on an Agency letterhead?

14 A Yes, it is.

15 Q What Agency is that?

16 A Food and, Food and Drug, Food and Drug  
17 Administration.

18 Q And who is that?

19 A That's my employer.

20 Q Okay. And, and the person who signed this letter,  
21 are you familiar with him?

22 A Yes, Calvin Lawson is the supervisor of my  
23 supervisor.

24 Q Okay.

25 A James Sawyer.

1 MS. CHOI: All right. Your Honor, I would move to  
2 admit No. 17 at this time.

3 MS. KING: And the State would, again, object, Your  
4 Honor. This is hearsay.

5 MS. CHOI: It's the same exact argument as the  
6 April --

7 MS. KING: Except this is not from Mr. Sawyer.

8 MS. CHOI: This is from Mr. Lawson, Mr. Sawyer's  
9 supervisor.

10 THE COURT: All right. I will admit Defendant's 17.

11 MS. CHOI: Thank you, Your Honor. If I may publish  
12 this to the jury?

13 (The document marked for  
14 identification as Defendant's  
15 Exhibit No. 17 was received in  
16 evidence.)

17 BY MS. CHOI:

18 Q And I know that you had a bunch of other  
19 correspondences from them and I'm just going to do one more.

20 MS. CHOI: If I may approach?

21 THE COURT: Yes.

22 BY MS. CHOI:

23 Q All right, Abe, I'm showing you what's been marked as  
24 Defendant's No. 18. Do you recognize this?

25 A Yes, I do.

1 Q Okay. What is it?

2 A This is a letter from March 31, 2017, telling me that  
3 I'm on suspension again.

4 Q And this is for how long?

5 A From James Sawyer without pay, indefinite suspension.

6 Q Okay. So as of March 31, 2017, no other  
7 correspondences have been received?

8 A From --

9 Q FDA.

10 A From FDA, no.

11 Q Okay. And the person who signed this letter is --

12 A James Sawyer.

13 Q And it is on the letterhead?

14 A On the FDA letterhead.

15 Q And who is that?

16 A My employer.

17 Q And is, are these pages the exact same copy of the  
18 original that you received?

19 A Yes, they are.

20 Q Any alterations to it?

21 A No.

22 MS. CHOI: Your Honor, I would move to admit  
23 Defendant's No. 18 at this time.

24 MS. KING: Same objection, Your Honor.

25 THE COURT: Overruled. Defendant's 18 is admitted.

1 MS. CHOI: Thank you, Your Honor.

2 (The document marked for  
3 identification as Defendant's  
4 Exhibit No. 18 was received in  
5 evidence.)

6 MS. CHOI: If I may publish?

7 BY MS. CHOI:

8 Q Mr. Mallik, what has this, what has all of this done  
9 to your life?

10 A It's basically destroyed my life both financially and  
11 my dignity.

12 Q What do you mean by that?

13 A I mean with this particular type of allegation and  
14 charges, people judge you first and then --

15 Q Okay. Without describing what other people are doing  
16 to you --

17 A That's how I felt is, I felt judged before I could  
18 even talk.

19 Q Can you please explain one instance where you felt  
20 what you felt?

21 A Yes, I can. This not only affected me, it affected  
22 my immediate family also and I think -- I just need a minute.  
23 I just need a minute.

24 Q Okay. Let's, all right, we'll get back to that.  
25 Now, Abe, did there come a time where with regard to the VPN,



1 that you installed it on your Acer laptop?

2 A I'm sorry?

3 Q Did there come a time that the, you installed the VPN  
4 on your Acer laptop?

5 A Yes.

6 Q Okay. And prior to that, how were you doing online  
7 banking?

8 A Between, once I found the device on, the foreign  
9 device on my network, I started using my phone, the cellular  
10 data, so it wouldn't be on the Wi-Fi so the intruder wouldn't  
11 get to see anything.

12 Q Okay. And you were being extra cautious?

13 A Correct.

14 Q Okay. Now I know that this has been very difficult.  
15 Are you able to tell the jury an instance of how this case has  
16 affected your life?

17 A Yes, I can. So, you have to excuse me. I can't do  
18 it.

19 Q Okay.

20 THE COURT: I'm going to take a 15 minute recess.

21 (Discussion off the record.)

22 THE BAILIFF: All rise.

23 THE COURT: You can step down, Mr. Mallik.

24 (The jury left the courtroom.)

25 (Recess)

1 THE BAILIFF: All rise.

2 THE COURT: Be seated please. All right. Let the  
3 record reflect counsel present, defendant is on the stand. Mr.  
4 Mallik, I'll remind you you're still under oath.

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Ms. Choi, you're finished?

7 MS. CHOI: The jury.

8 THE CLERK: The jury.

9 MS. KING: The jury, Your Honor.

10 THE COURT: Oh, I'm sorry. Bring in the jury.

11 MS. CHOI: Thank you.

12 (The jury entered the courtroom.)

13 THE COURT: All right, be seated please, ladies and  
14 gentlemen. Ms. Choi.

15 MS. CHOI: Thank you, Your Honor.

16 DIRECT EXAMINATION (Resumed)

17 BY MS. CHOI:

18 Q So, Abe, let's clarify a little bit about lawsuits  
19 that we're talking about. Can you explain to the jury what  
20 exactly the legal procedures are?

21 A Certainly. So everything is actually on appeal, so  
22 the suspension notices wrote in the notice itself what I can do  
23 in terms of what rights I had and that's what I was exercising.  
24 So I did not file a lawsuit against anybody outside of that  
25 premise. So all I was trying to do was get back to work.

1 Q Okay. And that's --

2 A So all of it was just appeals.

3 Q All right. That's the only thing that's pending?

4 A That's correct. That's the only thing that's pending  
5 is appeals within my rights, what the rights were listed on  
6 that document on how to get back to work.

7 MS. CHOI: Okay. That's all that I have, Your Honor.

8 THE COURT: Cross?

9 MS. CHOI: Oh, oh, I'm sorry, Your Honor. I have one  
10 more.

11 THE COURT: All right.

12 MS. CHOI: I apologize. If I may approach the  
13 witness?

14 BY MS. CHOI:

15 Q Mr. Mallik, I'm showing you what's been marked as  
16 Defendant's 19. Do you recognize that?

17 A Yes, I do.

18 Q And what is that?

19 A This is the receipt for an Asus router that I  
20 purchased.

21 Q And when was the date?

22 A This was May 2016.

23 Q Okay. And this is the exact copy of the original  
24 date?

25 A Yes, it is.

1 MS. CHOI: Your Honor, I would move to admit  
2 Defendant's No. 19 at this time.

3 MS. KING: No objection.

4 THE COURT: Defendant's Exhibit 19 is admitted.

5 MS. CHOI: Thank you, Your Honor.

6 (The document marked for  
7 identification as Defendant's  
8 Exhibit No. 19 was received in  
9 evidence.)

10 (Discussion off the record.)

11 BY MS. CHOI:

12 Q Abe, I'm showing you what's been marked as  
13 Defendant's No. 20, do you recognize that?

14 A Yes, I, yes, I do.

15 Q And what is it?

16 A It's my resume.

17 Q Okay. And it's exactly the same copy of the original  
18 and you created this resume?

19 A Yes, I did.

20 MS. CHOI: Your Honor, I would move to admit  
21 Defendant's No., Exhibit 20 at this time.

22 MS. KING: No objection.

23 THE COURT: Defendant's Exhibit 20 is admitted.

24 MS. CHOI: Thank you, Your Honor.

25 (The document marked for

1 identification as Defendant's  
2 Exhibit No. 20 was received in  
3 evidence.)

4 MS. CHOI: That's all I have of this witness, Your  
5 Honor.

6 THE COURT: Ms. King.

7 MS. KING: Thank you, Your Honor.

8 CROSS-EXAMINATION

9 BY MS. KING:

10 Q Mr. Mallik, you talk a lot about your civil suits.  
11 I'm going to, I'm just going to bring back your  
12 (unintelligible) and we're just going to go over some facts,  
13 I'm going to ask you a series of yes or no questions just to  
14 confirm whether they're facts or not, okay?

15 A Okay.

16 Q So you live at 1710 Canal Clipper Court, Point of  
17 Rocks, Maryland, correct?

18 A Correct.

19 Q And you created and use man\_maryland@gmail.com on  
20 July 26, 2010?

21 A Most likely.

22 Q You created callmetim\_, callme\_tim@yahoo.com on  
23 September 14, 2009?

24 A Most likely.

25 Q You say, you're saying most likely --

1           A     Because I don't remember the exact date.

2           Q     -- you don't, you don't dispute that, but you don't  
3 dispute the record, the business records that you were able to  
4 review?

5           A     I don't remember all the dates I created those  
6 accounts --

7           Q     Okay.

8           A     -- Madam State.

9           Q     You also have the e-mail,  
10 greatmarylandrental@gmail.com?

11          A     That is correct.

12          Q     And tennis\_101@hotmail.com?

13          A     That is correct.

14          Q     abemallik@gmail.com?

15          A     That is correct.

16          Q     So it's fair to say that you have lots of e-mails  
17 that you use for various purposes?

18          A     That is correct.

19          Q     You also told Detective Elrod in your interview you  
20 used Google Voice with some of these e-mails?

21          A     The great --

22               MS. CHOI:  Objection, Your Honor.

23               MS. KING:  Basis?

24               MS. CHOI:  That information wasn't testified to.

25 That's outside the scope.  Not, just because she's factually

1 talking about the interview, that particular issue was never  
2 discussed. He didn't testify to it.

3 MS. KING: Your Honor, counsel opened the door. I'm  
4 allowed to use the defendant's statements during his own  
5 interview.

6 THE COURT: Overruled.

7 MS. KING: Thank you.

8 BY MS. KING:

9 Q You told Detective Elrod that you had Google Voice  
10 associated with some of these e-mails, correct?

11 A Not some, with the greatmarylandrental.com account.

12 Q You actually had two different numbers. You stated  
13 that you had one with Maryland-man@gmail.com and also one with  
14 greatmaryland --

15 A I don't recall --

16 Q -- Gmail?

17 A -- Madam State.

18 Q Do you remember doing that interview with Detective  
19 Elrod?

20 A I do, but I don't remember the exact contents of what  
21 you're referring to.

22 Q If I -- and, actually, during that interview, Ms.  
23 Choi was present with you at that interview, right?

24 A That is correct.

25 Q And you stated to Detective Elrod that, counsel, I'll

1 tell you the page. Right where, so I only have, I have one  
2 phone attached to Maryland\_man and one phone attached to  
3 greatmarylandrental, that sounds correct?

4 A Possibly, yeah.

5 Q Okay. And you -- that's at page 53. And you told  
6 him that you would sometimes, you would have to actually  
7 associate this Google Voice with two different phones?

8 A I don't know what you mean.

9 Q You said one phone, meaning your phone, was attached  
10 to man\_maryland, you said your work phone?

11 A No, I don't, I don't think so, no.

12 Q So you just misspoke when you, you told Detective  
13 Elrod that?

14 A Most likely --

15 Q Okay.

16 A -- Madam State.

17 Q When you met with Detective Elrod, you actually had  
18 prepared a timeline that you discussed here in court today,  
19 right?

20 A Correct.

21 Q And there's actually a written out timeline  
22 physically in front of you?

23 A (No audible response.)

24 Q And you had also presented several articles regarding  
25 your Asus router that you researched, correct?



1           A     Yes, I did.

2           Q     And actually you said here that you had researched a  
3 lot regarding Asus, is that right?

4           A     Correct.

5           Q     You also told Detective Elrod that you researched a  
6 lot regarding how to hide your network, right?

7           A     Virtual private, I was looking at virtual private  
8 network, so I was doing research on virtual private networks,  
9 yes.

10          Q     And the reason you told him that you began  
11 researching private networks is because you saw an unknown  
12 device?

13          A     That is correct.

14          Q     Right? And actually you testified here in court  
15 today that you felt like you were being burglarized, that's how  
16 offensive it was to you, right?

17          A     Correct.

18          Q     And that you aggressively tried to remove that device  
19 from your router, is that right?

20          A     That is correct.

21          Q     And you told him in response to that, that's why you  
22 wanted to get Hide My Ass, correct?

23          A     Correct.

24          Q     Okay. And you purchased that program, we entered the  
25 receipt on February 9, 2016?

1           A     Yes, ma'am.

2           Q     Okay. And you registered that with the user name  
3 deputygod?

4           A     Yes.

5           Q     Okay. And the, actually for the billing information,  
6 you put the name deputygod as well?

7           A     Yes, ma'am.

8           Q     And you told Detective Elrod that you paid \$78 for  
9 that, right?

10          A     Yes, ma'am.

11          Q     And you told him that for what it's worth, for you  
12 that was worth to hide your cell phone?

13          A     Pardon me?

14          Q     You said for that price it was worth it to hide your  
15 cell phone?

16          A     My, hide my cell phone?

17          Q     Correct.

18          A     No, not my cell phone.

19          Q     Okay.

20                MS. KING: Counsel, I'm directing you to page 79.

21                BY MS. KING:

22          Q     You don't recall saying, "I don't remember how much  
23 it was, it was like 78 or 100 bucks, for me that was worth to  
24 hide my cell phone."?

25          A     To hide my cell phone?

1 Q Correct.

2 A No.

3 Q Okay. So --

4 A No, I may have said that, but it's not true --

5 Q Okay.

6 A -- because I didn't buy it to hide my cell phone.

7 Q So you were inaccurate in telling that to --

8 A Correct.

9 Q Okay. And your testimony here today is that you  
10 bought this network because you were so afraid of this  
11 intruder, right?

12 A Yes, ma'am.

13 Q But then you waited over a month to install it?

14 A I was undergoing vertigo at that time --

15 Q I'm just asking you --

16 A -- and I was sick.

17 Q -- so you waited over --

18 A Yes, ma'am.

19 Q -- a month to install it? Okay. You purchased that  
20 laptop on March 21, 2016?

21 A Correct.

22 Q And on that laptop you had two, you heard Mr.  
23 Gibson's testimony, you had two administrative users in Mallik  
24 and deputygod, correct?

25 A Uh-huh, correct.

1 Q And those users were created on March 22nd, the next  
2 day?

3 A Correct.

4 Q You, you said here in court that you installed  
5 malware by, and you installed Hide My Ass under deputygod?

6 A Correct.

7 Q All right. And you installed it on March 26th?

8 A Correct.

9 Q That's because you, and you describe it, you were the  
10 administrator of the home, you handled the technology, right?

11 A Yes, ma'am.

12 Q When there were router problems, you were the one  
13 that handled it, right?

14 A Yes, yes, ma'am.

15 Q You actually told Detective Elrod in your interview  
16 that your wife and daughter are just standard users?

17 A Yes, ma'am.

18 Q They don't have the authority or the privileges as a  
19 standard user to make any installations?

20 A Yes, ma'am.

21 Q Okay. So you were under deputygod when you were  
22 installing this program, just so we're clear?

23 A I am not certain what the privileges were for each  
24 account, Madam State.

25 Q Okay. So, okay, but you would agree that those were

1 installations under deputygod?

2 A I would have to check again, Madam State, but most  
3 likely you're right, but I'm not certain.

4 Q Now your daughter has her own cell phone?

5 A My used phone, yeah.

6 Q And your daughter has a laptop for school, that was  
7 clear?

8 A That's, yeah, she doesn't take it to school, Madam  
9 State.

10 Q Okay. She has her own laptop?

11 A Not necessarily, no.

12 Q Okay. There was a laptop that was cleared by Mr.  
13 Gibson and given back to your daughter because she needed it,  
14 correct?

15 A Yes, ma'am.

16 Q Okay. And you stated here in court that you'd have,  
17 you'd have, you'd had the opportunity to review all the  
18 evidence in this case, everything that the State has provided  
19 to you, right?

20 A Yes, ma'am.

21 Q And wouldn't you agree that there is no evidence that  
22 your daughter used that Asus laptop, no physical evidence that  
23 your daughter used that Asus laptop?

24 A Actually I think there was.

25 Q Okay. Isn't it true that you, and what would that

1 be?

2 A She, my daughter did an interview on the day of the  
3 raid with, with the police.

4 Q And you do, you, you, you're aware of that interview?

5 A That I was told, ma'am --

6 Q Okay.

7 A -- because I was sick that day.

8 Q Did you reads the contents of that --

9 A Yes, I did.

10 Q -- interview? And so it wouldn't surprise you that  
11 your daughter actually said that she used the desktop computer  
12 in your office, isn't that true?

13 A Well, she wouldn't really know what's what.

14 Q She, a 14-year-old doesn't know the difference  
15 between a laptop and a desktop?

16 A It's on my desk --

17 Q Okay.

18 A -- Madam State, so if it's on my desk, to her that's  
19 a desk computer.

20 Q And it was on that desktop that your daughter saw a  
21 pop-up of a woman in a bikini, is that right?

22 A I am not certain, Madam State.

23 Q And you, she actually said that you and you, you, and  
24 you confirmed that you know this information, confirming that  
25 you were not, that you began locking that door to that office

1 every single night?

2 A That's not true, Madam State. What she actually  
3 meant was that I put a timer on the laptop so she wasn't able  
4 to use it. So not the door itself, I wouldn't lock the door,  
5 but rather there was a timer on the laptop.

6 Q So she couldn't use your --

7 A There were certain --

8 Q So you didn't want her --

9 A -- times.

10 Q -- going on the Internet late at night?

11 A Correct.

12 Q Is that fair?

13 A Correct.

14 Q Okay. Let's move on from there. On your daughter's  
15 devices, there was no child pornography found, right?

16 A That's correct.

17 Q Okay. Let's talk about the search warrant now. So  
18 the search warrant happened on April 21st, right?

19 A Yes, ma'am.

20 Q 6:00 a.m., officers come to your house. You describe  
21 it as a raid, right, so it must be very startling?

22 A Uh-huh.

23 Q Is it fair, and you said to Detective Elrod, and he  
24 confirmed, that he read you the charges and what the  
25 investigation, why they were there?

1           A     I did not comprehend them at that time, Madam State.

2           Q     Okay. I'm not asking if you comprehended --

3           A     Yes.

4           Q     -- it. Did they tell you?

5           A     Yeah, they did.

6           Q     Okay. They wouldn't just come marching in your  
7 house --

8           A     No.

9           Q     -- without telling you what was happening?

10          A     No.

11          Q     And you were actually physically given a copy of the  
12 search warrant, correct?

13          A     Yes, I was.

14          Q     Okay. Then you sat in the living room with Corporal  
15 Ron Raul, like you stated, right, and you actually made the  
16 statement to him at 9:05 a.m., "There has been an intrusion on  
17 my network." That was, that was what you said, right?

18          A     Yes, ma'am.

19          Q     Those are very technical terms, Mr. Mallik, and  
20 those, that's exactly what you said, wasn't it?

21          A     That is correct.

22          Q     Okay. Let's talk about this timeline that you're  
23 wanting the jury now to believe and the timeline that you  
24 prepared for your interview with Detective Elrod. So you told  
25 Detective Elrod, and, you know, we're talking about a lot of



1 dates, so let me just see if you can keep us straight and you  
2 can confirm. You can see that from there, right?

3 A Yes, I can.

4 Q Okay. You told Detective Elrod in your interview  
5 that the Internet began slowing down actually on April, on  
6 February 2nd.

7 A Okay.

8 Q Do you recall that?

9 A Yes, I do.

10 Q Okay. And on February 3rd, you saw an unknown  
11 device, right?

12 A Correct.

13 Q That's this mysterious living room device and then  
14 you began shutting off, turning on, resetting your router,  
15 correct?

16 A Correct.

17 Q Okay. And you didn't, you did say that you noticed  
18 your Internet was slow?

19 A Correct.

20 Q And is it true that your Internet was slow because  
21 you were downloading child pornography?

22 A No, ma'am.

23 Q Okay. Your Internet wasn't slow because you're  
24 visiting these elicited websites?

25 A No, ma'am.

1 Q Okay. Then you talk about calling Comcast on  
2 February 12th, right?

3 A Yes, ma'am.

4 Q And you actually didn't even mention this to  
5 Detective Elrod, this date, but we do have records that support  
6 it. If I could see Defense exhibits? Let's talk about these  
7 calls to Comcast.

8 A Okay.

9 Q Now, Mr. Mallik, you called Comcast on February 12th  
10 and, correct me if I'm wrong, it says Abe Mallik slow HSI,  
11 informed they're getting 29 MBPS, informed that speed is  
12 correct because they have, they have performance, right?

13 A Uh-huh, correct.

14 Q You didn't tell them that there was an intruder --

15 A I did.

16 Q -- on your network?

17 A I did.

18 Q And you're saying that Comcast wouldn't note that  
19 important fact on their business record that there was an  
20 intruder on your network?

21 A Madam State, that's one sentence in there. That is  
22 one-hour conversation --

23 Q Okay.

24 A -- I had with them.

25 Q But you're saying, so that was, so --

1           A     I'm telling you.

2           Q     -- the line I read, did that include any information  
3 regarding an intruder?

4           A     Madam State, I didn't write the notes.

5           Q     Okay, but --

6           A     But it's a one-hour conversation --

7           Q     -- is that --

8           A     -- I had with them.

9           Q     -- is that information noted?

10          A     You have to ask Comcast, Madam State.

11          Q     Okay. We'll just let the jury read it and they can  
12 decide --

13          A     Sure.

14          Q     -- if it's in there or not.

15          A     But generally --

16          Q     I'm not, there's no question pending, sir.

17          A     Okay.

18               MS. CHOI: Your Honor, may we approach?

19               (Bench conference follows:)

20               MS. CHOI: Could she not badger the witness?

21               THE COURT: I'm sorry?

22               MS. CHOI: Could she not badger the witness and just  
23 let him finish --

24               MS. KING: This is cross-examination.

25               MS. CHOI: -- a sentence? Just tell her to --

1 THE COURT: Well --

2 MS. CHOI: Because it's --

3 THE COURT: -- I mean there was not a question --

4 MS. CHOI: -- she's not letting --

5 THE COURT: -- pending. I mean --

6 MS. KING: Right.

7 MS. CHOI: She's --

8 THE COURT: -- she has the right to control the  
9 witness to --

10 THE COURT: All right.

11 MS. KING: Thank you, Your Honor.

12 MS. CHOI: Okay.

13 THE COURT: Okay?

14 MS. CHOI: Fine.

15 (Bench conference concluded.)

16 BY MS. KING:

17 Q And then we see another call, okay? So we call, so  
18 unknown device on the 3rd, you call Comcast on the 12th, they  
19 don't report on their business record that you, you stated that  
20 there was an unknown device and the search warrant is executed  
21 on April 21st, is that right?

22 A Madam State, the call to the Comcast, Comcast does  
23 not own my router.

24 Q I'm sorry, I'm sorry, I'm, that's not the question  
25 that I asked when I said --

1           A     Okay.

2           Q     -- did the search warrant occur on the 21st?

3           A     Yes, it did.

4           Q     Okay. And then you called Comcast on April 27th  
5 again?

6           A     Correct, that is correct.

7           Q     Right?

8           A     Uh-huh.

9           Q     So that's after the search warrant, right?

10          A     Correct, uh-huh.

11          Q     That's after they took all your devices, right?

12          A     That is correct.

13          Q     That's after you had read and had an opportunity to  
14 read the basis of the search warrant, right?

15          A     Yes, ma'am.

16          Q     So you already knew that you were under investigation  
17 of child pornography, right?

18          A     Yes, ma'am.

19          Q     Okay. Similarly, you told Detective Elrod and you  
20 had the business record, actually, no, you told Detective Elrod  
21 that you called Asus on February 29th?

22          A     Yes, ma'am.

23          Q     Correct?

24          A     Yes.

25          Q     Again, that's after the search warrant, right?

1           A     It's actually after the router died.

2           Q     I'm sorry, is that, was this date after or before the  
3 search warrant?

4           A     Yes, ma'am.

5           Q     Okay. Is it after or before the search warrant?

6           A     After.

7           Q     After or before you had read the search warrant  
8 documentation that informed you you were being charged for  
9 child pornography?

10          A     After.

11          Q     Okay. And you actually gave Detective Elrod the  
12 specific number of the call, right? Is that call number  
13 N160490174?

14          A     It could be.

15          Q     Okay. And you've actually, because you've reviewed  
16 all the evidence, you know that we, we have that recorded  
17 call --

18          A     Uh-huh.

19          Q     -- right? You had the --

20          A     Right.

21          Q     -- opportunity to listen to that call?

22          A     Yes, I did.

23          Q     Okay. And in that call you state, "Hi, I'm having  
24 trouble with my Asus router. It stopped working Tuesday  
25 night."

1 A Uh-huh.

2 Q Right?

3 A Right.

4 Q And like you described, they had you reset and had  
5 you on hold for a while, had you plugging in different,  
6 different cords to different places, right?

7 A Uh-huh, that's right.

8 Q And on that call you never mentioned that there was  
9 an unknown device on it, did you?

10 A I didn't call them to report --

11 Q Okay.

12 A -- an unknown device.

13 Q Yes or no?

14 A No.

15 Q Did you? No, you did not. Thank you. And on that  
16 call you actually told Asus, "I have already updated the latest  
17 firmware," right, off of their website?

18 A That's not correct. I told them I --

19 Q Did you, did you update the firmware?

20 A No, I was not able to, that was the whole phone call,  
21 the entire phone call was because they could not update the  
22 firmware. So they asked me to download it --

23 Q You --

24 A -- on the computer.

25 Q You, you listed off a specific firmware that you had,

1 you had on there, correct?

2 A Yes, ma'am.

3 Q Okay. Now looking at this timeline, let's put in the  
4 important date of March 3rd, right? That's when the alleged  
5 child, child pornography was sent.

6 A Okay.

7 Q You told Detective Elrod you knew that your account  
8 had been deactivated?

9 A What account was deactivated?

10 Q That Maryland, man\_maryland@gmail, right, you tried  
11 to log in and you received some notification --

12 A Correct.

13 Q -- your account had been deactivated.

14 A Correct.

15 Q You have the opportunity to contest this, right?

16 A Correct.

17 Q And you didn't do anything about that, did you?

18 A No, because it --

19 Q Okay. Yes or --

20 A -- it was not a --

21 Q -- no?

22 A No, ma'am.

23 Q Okay. So here we have an unknown device on your  
24 router, your Gmail has been shut down and you've done nothing  
25 to -- you hadn't even called the police?



1 A You're not letting me explain.

2 Q I'm sorry, did you call the police?

3 A You're not letting me explain, Madam State.

4 Q I'm sorry, did you call the police --

5 A I didn't know I had to call --

6 Q -- to report --

7 A -- the police.

8 Q -- to report an unknown device on your router?

9 A I didn't know I had to call the police.

10 Q Okay.

11 MS. CHOI: I'm sorry, what was the question, with  
12 regard --

13 MS. KING: Did he call, did he call the police --

14 MS. CHOI: With regard to the --

15 MS. KING: -- with regard to --

16 MS. CHOI: -- Gmail disabling or the --

17 MS. KING: Culmination of --

18 MS. CHOI: -- (unintelligible).

19 MS. KING: -- of both those things.

20 MS. CHOI: Okay.

21 MS. KING: He said, no, he --

22 MS. CHOI: Okay.

23 MS. KING: -- his answer was, no, he didn't think  
24 that he had to. Okay.

25 BY MS. KING:

1           Q     During your interview with Detective Elrod, a big  
2 portion of that interview, you were talking about an incident  
3 with your neighbor, right?

4           A     Yes, ma'am.

5           Q     Where there was some neighborly disputes --

6           A     Uh-huh.

7           Q     -- regarding parking spots and things and you talked  
8 about one day coming out of your house and seeing your tires  
9 flattened, right?

10          A     Yes.

11          Q     One of your, one of your tires flattened, is that  
12 correct?

13          A     Yes, ma'am.

14          Q     And you called the police regarding that, right?

15          A     It's, it's a physical thing.

16          Q     Okay. That's just what I wanted to confirm.

17          A     Yeah. This was an Internet issue.

18          Q     Okay. There's no question pending. All right. So  
19 let's take a look at some of these exhibits. Where's the  
20 screenshot?

21                   (Discussion off the record.)

22                   BY MS. KING:

23          Q     All right. So during that interview with Detective  
24 Elrod, you say that your mother-in-law was visiting?

25          A     Yes, ma'am.

1 Q Okay. And she had a brand new laptop?

2 A Yes, ma'am.

3 Q Right? And it was actually on April 29th that she  
4 couldn't get in the Internet and you, she was trying to be  
5 more, trying, trying to install a game and you couldn't, so you  
6 wanted to see what was wrong, right --

7 A Yes, ma'am.

8 Q -- on April 29th? Okay. Let's -- so April 29th and  
9 so I'll just put mother-in-law's laptop, okay, because it's not  
10 in any of your devices because all your devices are gone,  
11 right?

12 A Yes, ma'am.

13 Q All right. So she just came over with a different  
14 device now?

15 A Yes, ma'am.

16 Q All right. You didn't bring that device to Detective  
17 Elrod?

18 A No, ma'am.

19 Q Okay. That device wasn't forensically examined,  
20 right?

21 A I don't know, ma'am.

22 Q Okay. And you stated that you had put malware, so I  
23 guess you had it on a thumb drive now, because you didn't have  
24 any of your devices, so how did you, you, how did you install  
25 it on her computer, because you weren't able to connect to the

1 Internet?

2 A Actually after the raid, we actually had to get  
3 another laptop, so we had, we purchased another laptop and I  
4 purchased another thumb drive, a couple of thumb drives after  
5 the raid.

6 Q So now, now there's a whole new device?

7 A I'm sorry, ma'am?

8 Q You brought, you bought a whole new device?

9 A After the raid?

10 Q Yeah.

11 A Yeah, I needed --

12 Q Oh, okay.

13 A -- it because they took all --

14 Q Do you have any document --

15 A -- my computers.

16 Q -- you don't have any documentation of that, do you?

17 A I didn't think I had to bring them in.

18 Q Okay. So I'm going to show you what you identified  
19 as a screenshot, all right? This is your screenshot?

20 A Yes, ma'am.

21 Q But this is not the full screen, it conveniently  
22 doesn't include the date or time, does it?

23 A It is the full screenshot.

24 Q So there's the, the usual task bar where there's a  
25 date and time that's not --

1 A When you --

2 Q -- located on there?

3 A The task bar is not part of the screen.

4 Q Okay. So, but looking at this document, there's no  
5 way to verify what day or time this was taken, right?

6 A Madam --

7 Q Just by, just by looking at this, you couldn't tell?

8 A Madam State, the only reason I took the screenshot,  
9 because it was --

10 Q Can you, I'm asking you a question --

11 A -- unusual.

12 Q -- sir. Can you tell by looking at this?

13 A No, ma'am.

14 Q Okay. Let's talk about your router now. You  
15 purchased this router in 2014?

16 A Possibly, yes, ma'am.

17 Q August 2014 to be exact actually, right, because you  
18 actually stated in the interview that you remember it was  
19 August 2014 because the password to your router was August  
20 2014, right?

21 A Most likely.

22 Q Okay. And you had no issues with this alleged,  
23 defective router until February 2016, right?

24 A Yes, ma'am.

25 Q Okay. So we confirmed your router was password-

1 protected. We confirmed that it had some firmware on it,  
2 right?

3 A Yes, ma'am.

4 Q Okay. And there's no --

5 THE COURT: Ms. King --

6 MS. KING: Yes?

7 THE COURT: -- we have an indication the jury can't  
8 see that.

9 MS. KING: Oh, sure.

10 THE COURT: Can we have a little help over here  
11 moving that?

12 MS. KING: Yes, I'm sorry about that, yeah, that's  
13 fine.

14 THE COURT: Everyone seeing now?

15 MS. CHOI: I can't see the jury.

16 BY MS. KING:

17 Q Okay. Let's talk about some of these other  
18 documents. So, Mr. Mallik, you're a very educated man, right?

19 A Yes, ma'am.

20 Q You submitted your resume. You have tons of  
21 professional experience?

22 A Yes, ma'am.

23 Q I think you've demonstrated today that you are  
24 meticulous, right?

25 A Thank you.

1 Q And you are thorough?

2 A Yes, ma'am.

3 Q You do a lot of research --

4 A Yes, ma'am.

5 Q -- right? You actually say that you wrote a 300-page  
6 policy for the Government, right?

7 A Yes, yes, ma'am.

8 Q We have in evidence here, you know, meticulous notes  
9 on dates and conversations regarding the e-mails that you sent  
10 regarding James and, you know, what he said to you, when he  
11 said it to you, how he said it to you, very, very detailed,  
12 would you, would you agree?

13 A Yes, ma'am.

14 Q But you can't remember your iPad password?

15 A Madam State --

16 Q Can you remember your iPad password, yes or no?

17 A Yes, I gave them the password.

18 Q Okay. But none of those passwords worked?

19 A I volunteered to go down to the sheriff's office --

20 Q Okay.

21 A -- to work with them.

22 Q Did any of those passwords work?

23 A Madam State, I volunteered to go to the sheriff's  
24 office to actually work with the password, with the, with the  
25 iPad. I volunteered to physically go there and help them

1 figure the password out and they declined.

2 Q And you keep such meticulous documentation, but you  
3 don't have any documentation as to the alleged 200 pieces of  
4 malware on your own Acer laptop?

5 A I did not put them there, Madam State.

6 Q Okay. And you don't have any proof or documentation  
7 as to this unknown device?

8 A No, Madam State.

9 Q Okay. Do you have any proof that you have vertigo?

10 A Yes, ma'am.

11 Q Do you have it here in court?

12 A Not today.

13 Q So, Mr. Mallik, I'm going to -- you classify yourself  
14 as a whistleblower, right?

15 A Yes, ma'am.

16 Q That's somebody that reports wrongdoings?

17 A Yes, ma'am.

18 Q And, again, you did not call the police when you saw  
19 an unknown device?

20 A Madam State --

21 Q Okay. Yes or no, did you call the police?

22 A No, Internet crimes, there is no crimes --

23 Q And --

24 A -- Internet crimes police.

25 Q I'm going to direct your attention to Exhibit -- this



1 is the settlement agreement, right?

2 A Yes, ma'am.

3 Q And tell me if I'm not, if I'm not reading this  
4 correctly, it says plaintiff, which in this case is, the  
5 plaintiff is you and the defendant is United States Department  
6 of Health and Human Services.

7 A Yes, ma'am.

8 Q I agree as a part of this agreement that this shall  
9 never at any time or any purpose be construed as an admission  
10 by HHS as a liability or responsibility to the plaintiff,  
11 correct?

12 A I don't know what that means, Madam State. The --

13 Q Okay.

14 A -- it's too --

15 Q So you don't know what it means?

16 A It's legally, I don't understand the legal language  
17 you just said.

18 Q But you know what hearsay is, right?

19 A Yes, ma'am.

20 Q Let's talk about your beautiful drawing regarding --

21 A Okay.

22 Q -- HHS.

23 A I can't see the drawing from here, Madam State.

24 Q Okay, you remember, you made it at least twice  
25 standing right, you know what it looks like, right?

1 A Yes, ma'am.

2 Q Okay.

3 A Yes, ma'am.

4 Q I -- how many employees does HHS have?

5 A 70,000.

6 Q How many?

7 A 70,000.

8 Q 70,000?

9 A Yes, ma'am.

10 Q How many employees does the FDA have?

11 A 16,500.

12 Q Okay. And you want the jury to believe that they're  
13 targeting you specifically?

14 A Yes, ma'am.

15 Q Okay. And you want the jury to believe that Mr.  
16 Sawyer, is that right --

17 A Yes, ma'am.

18 Q -- he's setting you up, right?

19 A Yes, ma'am.

20 Q Okay. Does Mr. Sawyer have any background in IT?

21 A No, ma'am.

22 Q Okay.

23 A He might, I don't know.

24 Q This, you don't know? Okay. The unknown hacker, he  
25 didn't use your primary e-mail address to send this child

1 pornography, did he?

2 A No, ma'am.

3 Q He didn't call and notify directly the FDA that you  
4 have child pornography?

5 A I don't know, ma'am.

6 Q Okay.

7 A I can't speak for him.

8 Q All right. You actually, you want the jury to  
9 believe that this individual waited until you got a brand new  
10 laptop for them to put the child pornography on it?

11 A I don't know. I don't know his motives. You're  
12 asking me to speculate and I don't know.

13 Q So they, this, so in order for, we, for me to believe  
14 your story, for us to believe your story, this individual would  
15 need to know that you had a new laptop?

16 A I don't know how he knew or what he knew, Madam  
17 State.

18 Q That they would have to rely on the chances that  
19 Google would catch a hash value for an image, right?

20 A Madam State, again, I don't know what he was  
21 thinking.

22 Q You, so you deny any knowledge of any of the e-mails,  
23 not just the ones regarding child pornography, but all the e-  
24 mails, is that what you're saying?

25 A That is correct, Madam State.

1 Q So someone is just sending pictures of property to  
2 themselves?

3 A Madam State, the great Gmail --

4 Q I'm talking about man\_maryland@gmail.com.

5 A I rarely use that e-mail, Madam State.

6 Q Okay. So rarely? So sometimes you do?

7 A Yes, I do.

8 Q Okay. So sometimes you do e-mail yourself pictures  
9 and photographs?

10 A No, Madam State.

11 Q So you deny that those images that were admitted into  
12 evidence, let me show you, is also the hacker?

13 A I don't know who sent them, Madam State.

14 Q Okay. These images are of a fireplace and you don't  
15 know who sent these?

16 A I, I could have, I don't know, Madam State.

17 Q Okay. Mr. Mallik, I'm almost finished here. I just  
18 want to just make things very clear. You wanted to hide your  
19 child pornography and that's why you got Hide My Ass?

20 A That's not true.

21 Q Okay. You e-mailed your child, you e-mailed child  
22 pornography using Hide My Ass on your iPad, didn't you?

23 A That's not true.

24 Q And you became nervous after March 3rd when you  
25 noticed your account was shut down, so you got a new laptop,

1 isn't that true?

2 A That's not true.

3 Q And you created that user name deputygod on that  
4 laptop, that's true --

5 A That's --

6 Q -- though?

7 A Pardon me? Yes.

8 Q You created the deputygod?

9 A Yes.

10 Q And you installed Hide My Ass under deputygod?

11 A Most likely, Madam State.

12 Q And you knew during the search warrant that you were  
13 caught and began coming up with an excuse, didn't you?

14 A Not true --

15 Q And you did --

16 A -- Madam State.

17 Q -- a lot of research on Asus, you did a lot of  
18 research on IP addresses and you are well-informed before you  
19 went into the interview with Detective Elrod, weren't you?

20 A Madam State, the day I told Detective Ron Raul there  
21 was an intruder, I was so sick I couldn't stand up. So it's  
22 hard for me to come up with all these excuses when I'm that  
23 sick.

24 Q Right.

25 A So that's not true.

1 Q On the 21st, maybe, but on the 27th, on the 29th,  
2 here in court today, you did have enough time, didn't you?

3 A To prove my innocence, yes.

4 Q And, Mr. Mallik, you wouldn't -- is it fair to say  
5 that someone possessing child pornography, they wouldn't want  
6 their wife or child to find out, right?

7 A I wouldn't know, Madam State.

8 Q Is it fair to say that a person wouldn't want their  
9 child --

10 A You're asking me to speculate.

11 MS. CHOI: Asked and answered, objection, Your Honor.

12 THE DEFENDANT: Yeah.

13 MS. KING: No further questions.

14 MS. CHOI: He doesn't know.

15 THE COURT: Ms. Choi, redirect?

16 MS. CHOI: Thank you, Your Honor.

17 REDIRECT EXAMINATION

18 BY MS. CHOI:

19 Q With regard to deputygod, what is that title about?

20 A Yeah, my daughter and I, we were watching the Deputy  
21 Dawg TV show and my daughter said wouldn't it be funny instead  
22 of dog it would, if we reverse the words, it become god. So it  
23 was a joke for a while, so we continued on with the joke and  
24 that's how the name came up and I explained that to Detective  
25 Elrod when I met with him at length because it's so confusing

1 if somebody looks at it. It was Deputy Dawg, so we went from  
2 Deputy Dawg and we just turned the dog around to god because it  
3 was funny and that's what it was. So we were just having fun  
4 within the family.

5 Q With regard to this question about hiding your cell  
6 phone, would it refresh your recollection with regard to the  
7 complete explanation of what it is you were talking about to  
8 Detective Elrod if I gave you the exact page?

9 A Yes, ma'am.

10 Q Page 79? All right. Why don't you take a look at  
11 the entire paragraph. And once you're ready, let me know.

12 A Yeah, it said I was trying to put up a shield or  
13 something so he couldn't find me.

14 Q Okay. So was it just about the cell phone or was it  
15 about all your devices?

16 A All my devices.

17 Q Okay. So she didn't read that into the record,  
18 right?

19 A Correct.

20 Q She just focused on that particular sentence about  
21 the cell phone only?

22 A Yes, ma'am.

23 Q Cherry picking?

24 A Yes.

25 MS. KING: Objection, Your Honor.

1 MS. CHOI: Withdrawn.

2 THE COURT: Sustained. Strike.

3 BY MS. CHOI:

4 Q With regard to James Sawyer, is he a hacker that you  
5 know of?

6 A I don't know.

7 Q Okay. Would he have the means -- he's employed, he  
8 gets paid --

9 A Yes.

10 Q -- to hire a hacker?

11 A Absolutely.

12 Q With regard to this iPad, I'm really glad that the  
13 State brought it up. I'm really glad. Did you at any time  
14 offer to help with regards to the iPad?

15 A Absolutely.

16 Q How many times did you offer?

17 A Several times.

18 Q And did you offer to physically go with them?

19 A Absolutely.

20 Q Them meaning law enforcement?

21 A Exactly.

22 Q In fact, where was the iPad when the search warrant,  
23 when the raid actually occurred?

24 A I couldn't find the iPad for months and it's so tiny,  
25 it was stuck somewhere in between the books and these gentlemen



1 found it during the raid. So that's why it was not synced and  
2 I think Steven Gibson testified yesterday that none of my  
3 devices were synced.

4 MS. KING: Objection.

5 MS. CHOI: Okay.

6 BY MS. CHOI:

7 Q You said you understand hearsay?

8 A Yes.

9 Q You cannot repeat --

10 A Got it.

11 Q -- what other people say because that's hearsay.

12 A Okay. But this device was --

13 Q Okay.

14 A -- missing for a long time.

15 Q Okay. All right.

16 A I couldn't find it.

17 Q All right. With regard to this neighbor, at the time  
18 that you provided this interview, did you have any idea really  
19 what was going on or did you provide information as much as  
20 possible to give to Detective Elrod so that he could help you  
21 investigate?

22 A Yeah, the interview was actually, I was hoping he  
23 would find the hacker. So I was, I went there under the  
24 impression that he was going to help me catch this person and  
25 follow-up on everything I said and, unfortunately, that never

1 occurred.

2 Q All right. So Ms. King made this big to do about  
3 protecting your daughter and, and not exposing her to child  
4 pornography. Did you have any reason to think that child  
5 pornography was on the Acer laptop at any time?

6 A I had no idea.

7 Q With regard to the man@maryland, or  
8 man\_maryland@gmail.com, is that used as a secondary e-mail?

9 A Absolutely. Tertiary.

10 Q I'm sorry, what was that?

11 A Tertiary, even, not even secondary, yeah.

12 Q With regard to those Comcast account notes, is that  
13 one sentence a great representative of that one-hour phone  
14 conversation?

15 A No, it's not.

16 Q And in that, how, did you explain to them  
17 everything --

18 A Yes, I did.

19 Q -- that was going on?

20 A Yes, I did. It was a very lengthy phone call.

21 Q And, and when exactly did Detective Snyder subpoena  
22 those records and then provide them --

23 A Just a few days before trial and I provided them the  
24 information a year ago to investigate this hacker and they  
25 waited a whole year.

1 MS. KING: Objection.

2 BY MS. CHOI:

3 Q Well, the dates are what they are, correct?

4 A Correct.

5 Q And it was almost a year after?

6 A That is correct.

7 Q And with regard to this neighbor that they followed  
8 up on, which, when was that?

9 A A year later.

10 Q So there's been this consistent pattern of follow-up  
11 a year later?

12 A Exactly.

13 Q And did you at any time, were you at any time asked  
14 whether or not you had, or you denied owning these e-mail  
15 addresses?

16 A No, I was never asked that.

17 Q Okay. And, in fact, did you provide them as much  
18 information as you could?

19 A I was extremely cooperative.

20 Q Okay. So you provided the Hide My Ass receipt --

21 A Correct.

22 Q -- and you can say it out loud.

23 A Absolutely.

24 Q Hide My Ass receipt that you, the State is saying  
25 that you specifically purchased that software with that name --

1 MS. KING: Objection, Your Honor, counsel is leading.  
2 If she could stop testifying and ask a question?

3 THE COURT: Sustained.

4 BY MS. CHOI:

5 Q So you provided that receipt. What other receipts  
6 did you provide?

7 A I provided with them, I provided them with everything  
8 I had because I was under the impression that they were going  
9 to help me find the hacker at that moment. That was my  
10 intention of providing the interview, but nothing happened.

11 Q But what do you realize now that all the information  
12 you provided to them, what happened?

13 A Anything that would help me they did not do until a  
14 few days ago, so they didn't call Comcast until a few days ago.  
15 They didn't call Asus until a few days ago, a year later, so  
16 they were just constantly looking to see if they could find  
17 something wrong and they actually pegged me as being guilty.

18 MS. KING: Objection.

19 THE COURT: Sustained.

20 BY MS. CHOI:

21 Q And, and with regard to this question about you  
22 waiting a month to install this VPN, how bad was your vertigo?

23 A My vertigo was pretty bad, plus I also was looking to  
24 find, get a new laptop, a 17-inch laptop.

25 Q Why is that?

1           A     And I only, because I can't see too well, you know,  
2 the phone is nice, but, you know, the font is too small on the  
3 phone. So I wanted to get a 17-inch laptop. And I, I thought  
4 I only had one license and I wanted to wait until I got the new  
5 laptop to install it on the new laptop, that's why I didn't  
6 install it right away.

7           Q     With regard to the iPad, you heard the testimony of  
8 Mr. Gibson that they couldn't do anything with it. In fact,  
9 were you frustrated with that testimony?

10          A     Absolutely was frustrated with that.

11               MS. KING: Objection.

12               MS. CHOI: Your Honor --

13               THE DEFENDANT: You can plug --

14               THE COURT: Wait a minute. Wait a minute.

15               MS. KING: It's just leading.

16               BY MS. CHOI:

17          Q     Why were you frustrated?

18               MS. KING: You said --

19               MS. CHOI: Were?

20               THE DEFENDANT: Okay.

21               MS. CHOI: Hold on. Do you want me to ask it in a  
22 different way?

23               THE COURT: Rephrase the question.

24               MS. CHOI: Okay.

25               BY MS. CHOI:

1           Q     How did you feel when you heard about the iPad not  
2 being able to get into it?

3           A     An iPad, you can plug an iPad into any device --

4           MS. KING:   Objection --

5           THE DEFENDANT:  -- into any laptop --

6           MS. KING:  -- as to lack of foundation.  He's trying  
7 to, technical testimony that he's not qualified to do.

8           THE COURT:  Sustained.

9           MS. CHOI:  Okay.

10          BY MS. CHOI:

11          Q     With all those e-mails, do you use all of them?

12          A     No, ma'am.

13          Q     And, and the phone calls that you didn't make to the  
14 police, now that you have been involved in this criminal  
15 process for the very first time in your life, if anything  
16 unusual happens, what's the first thing you're going to do?

17          A     Just call the police.  I didn't realize if I had a  
18 foreign device I had to call the police, but now I do.

19          Q     Okay.

20          MS. CHOI:  Nothing further, Your Honor.

21          MS. KING:  Nothing further in light of that.

22          THE COURT:  All right.  Thank you, sir.  You can step  
23 down.

24          THE DEFENDANT:  Thank you.

25               (Witness excused.)

1 THE COURT: Ms. Choi.

2 MS. CHOI: Thank you. Your Honor, Your Honor, may we  
3 approach?

4 (Bench conference follows:)

5 THE COURT: I think at least an hour.

6 MS. KING: Yes, I didn't understand --

7 MS. CHOI: (Unintelligible.)

8 MS. KING: -- I wanted to break for lunch at this  
9 time.

10 MS. CHOI: Do they want to break for lunch? She's  
11 going to take probably an hour --

12 MS. KING: And then --

13 MS. CHOI: -- and then I'm done, completely done, no  
14 more witnesses.

15 THE COURT: Let me, let me ask a question. Are, I  
16 have the verdict sheet here.

17 MS. CHOI: Yes, yeah.

18 THE COURT: You all have looked at this?

19 MS. CHOI: Yes.

20 MS. KING: Yes.

21 MS. CHOI: Yes.

22 THE COURT: And the instructions are finalized?

23 MS. KING: We just need to review them one --

24 MS. CHOI: Yes.

25 MS. KING: -- more time just --

1 MS. CHOI: Just one more time.

2 MS. KING: -- for, but we're on the same page, we  
3 just want to review the final --

4 MS. CHOI: Yes.

5 MS. KING: -- copy.

6 MS. CHOI: Yes, we've agreed to all of them.

7 THE COURT: Why don't, why don't you do that over  
8 lunch?

9 MS. KING: Yes.

10 MS. CHOI: Okay.

11 THE COURT: Okay?

12 MS. CHOI: Yes.

13 THE COURT: I'd like to move right to giving them --

14 MS. KING: The rest of the trial then, yeah.

15 THE COURT: -- instructions and --

16 MS. KING: That's fine.

17 THE COURT: Okay.

18 MS. KING: I think we'll be --

19 MS. CHOI: Sounds good, yeah.

20 (Bench conference concluded.)

21 THE COURT: All right, ladies and gentlemen, I'm  
22 going to break for lunch. We will resume at 1:30.

23 (The jury left the courtroom.)

24 THE BAILIFF: All rise.

25 (Recess)



1 THE COURT: Be seated please. Bring them out.

2 (The jury entered the courtroom.)

3 THE COURT: Be seated please, ladies and gentlemen.

4 All right, Ms. Choi.

5 MS. CHOI: Thank you, Your Honor. The defense calls  
6 Mark Johnson.

7 MARK JOHNSON

8 called as a witness on behalf of the defendant, having been  
9 first duly sworn, was examined and testified as follows:

10 DIRECT EXAMINATION

11 BY MS. CHOI:

12 Q Mr. Johnson, if you could make sure to keep your  
13 voice up so that everyone can hear you?

14 A Will do.

15 Q Okay. Thanks. All right. Mr. Johnson, please state  
16 your full name.

17 A Mark Alan Johnson.

18 Q And what is your occupation?

19 A Information security officer.

20 Q And where is your place of employment?

21 A Broad Soft in Gaithersburg, Maryland.

22 Q And what is your present title and position?

23 A Corporate information security officer.

24 Q And what are some of your duties and function of your  
25 current position?

1           A     Primary duty I have is to oversee the security of all  
2 corporate information inside the corporate network whether that  
3 be HR post no records, PII, PCI data, intellectual property  
4 from software development. I'm embedded in the IT team, but I  
5 don't really report to them, but I do check on how they are  
6 discovering or dealing with virus attacks, denial of service  
7 attacks, malware, so I -- anything that touches the  
8 information, I, I have my finger on it.

9           Q     And what academic degrees do you hold?

10          A     I have an undergrad in IT and an MBA in IT  
11 management.

12          Q     And can you briefly describe the subject matter of  
13 your specialty?

14          A     My, I am a cyber-security professional, so I  
15 specialize and keep up-to-date with anything that involves  
16 securing information and conversely how to steal information,  
17 hacking, counter-hacking, ethical hacking, two fact  
18 authentication when you touch your thumb on your phone, website  
19 security, SSL security.

20          Q     And how about how routers function?

21          A     Routers, I've spent throughout my, I've been working  
22 with networks and security now for 20 years. I've touched a  
23 lot of routers. I own a lot of routers. I've designed  
24 networks and every time I did design a network, whether it's  
25 for disaster field office with the Federal Government or some

1 other state or municipality, it always involves a router. So  
2 I'm very familiar with router, router functions, how to connect  
3 routers and what they can and can't do.

4 Q So would you describe yourself as a specialist with  
5 the knowledge of routers and how they function?

6 A Yeah. Yeah.

7 Q Okay. And with regard to your specialized training,  
8 what does CISSP stand for?

9 A CISSP is a certified information systems security  
10 professional through the organization ISC squared. There's  
11 about 100, just over 100,000 CISSP's in the world. If anyone  
12 is looking for a cyber-security job with the Federal Government  
13 as a senior executive or, you got to have a CISSP.

14 Q And do you have that?

15 A Yes, I do.

16 Q Okay. And with regard to the exam process, strike  
17 that. Have you had any background checks done on you?

18 A Yes. I had a background check, an employment  
19 background check done on me in November and December of 2016  
20 when I switched from AECOM to Broad Soft and I just had another  
21 one completed with Safe and Secure Online. Safe and Secure is  
22 the charitable outreach organization for IST Squared and it  
23 promotes cyber safety for children, teens and adults and  
24 seniors. And I have a, you have to go through a background  
25 check because you'll be presenting, doing presentations to kids

1 and to their parents, and I have a series of presentations  
2 coming up in Point of Rocks in another month. I have to  
3 schedule some time.

4 Q Okay. And do you also hold what's called a SANS GIAC  
5 security essential certificate?

6 A Yes, I have a SANS GSEC. So GSEC, global security  
7 essentials, it's, it's almost a precursor to a CISSP, but more,  
8 it's a mid-level cert. It's higher than say a security plus,  
9 which is like an entry level security plus, security  
10 certification. It's a mid-level cert.

11 Q Okay. And with regard to your certifications, are  
12 you a Microsoft certified systems engineer?

13 A Yes, I am a Microsoft systems, certified systems  
14 engineer, have been since 2000, I believe. So I've touched  
15 everything in active directory, Microsoft Windows, computers  
16 from Windows 311, NT, Windows XP 7, 8, 10, Windows servers from  
17 NT through until 2012.

18 Q Okay. And that exam process, can you describe how  
19 long it is and how --

20 A MCSE's are, MCSE exam, each, each certification  
21 organization has different types of exams. MCSE certification,  
22 for the full MCSE, is seven exams and each exam may be 150, 200  
23 questions and varies, and typically is about three hours. The  
24 GSEC exam was based out of a thousand, but it was only another  
25 say 150, 200 questions, whereas the CISSP was a 6-hour exam and

1 that was 250 questions.

2 Q And you passed all of those exams?

3 A Yes.

4 Q Okay. And, again, how many years have you been in  
5 this field of cyber-security?

6 A 20 years, since 1997.

7 Q And with regard to the specific nature of these  
8 charges, have you ever worked with child pornography, children  
9 being abused and, and things like that?

10 A Yes. No one ever really wants to say yes, but, yes,  
11 I have. It's, years ago, maybe 12, 13, 14 years ago, there was  
12 a TV show, Dateline show, To Catch a Predator, and the group  
13 they used to use was a group called Poetic Justice, PJ as it's  
14 called. So with PJ, at the time I was living in Montgomery  
15 Village, and my daughter's mother passed away. She was living  
16 with me and she was a teenager at the time and so I, I had some  
17 time, so I wanted to volunteer.

18 And what I would do is I would create profiles. I  
19 would create fictitious profiles of teenagers or, between the  
20 ages of 12 to 15, real elementary schools, real shops, real  
21 malls, real parks, different things they might like to do,  
22 places they might like to hang out and you create these  
23 profiles and you post them. And once you post them, other  
24 people then take those profiles, then, then they go online to  
25 chat groups, they interact and they chat with people. And then

1 anytime they start developing a shat and should something come  
2 about where there's images sent this way or the intention to  
3 meet or set up a meeting out-of-state or in-state, then they  
4 take those whole case logs and they pass them off to state or  
5 local police and they average about 50 convictions a year.

6 Q Okay. Now do you continue to get updates on  
7 certifications as required?

8 A Yes, you have to -- MCSE, I'm grandfathered in for  
9 life. CISSP, you have to maintain 40 continuing professional  
10 education credits a year. So a part of that is I'll be doing a  
11 cyber-security series at Point of Rocks. I'm hoping to expand  
12 it out to some of the other Frederick County schools once we  
13 get -- we're still developing the material. The organization  
14 has spent a lot of money in bringing in Garfield character and  
15 developing, to develop some unique cartoons for the youngest  
16 kids. And so we're hoping to really get more professionals out  
17 there. Part of the cannon, when you're ISC Squared members,  
18 especially CISSP, is to advance the field and protect society.  
19 So the goal is to really not stay in your office, secure in  
20 your own network, but to really help people in the community  
21 secure their world.

22 So I, I, a lot of what, what I do is that. I do a  
23 lot of outreach at my firm. I send out alerts basically on  
24 what's going on within the firm security-wise, but also things  
25 like Want to Cry to Chipotle was hacked the other day, so I had

1 to send out an alert and how people can check their credit and  
2 where they could check to see if they used a Chipotle  
3 restaurant, things like that.

4 Q And, and have you worked during your professional  
5 career with the Government on some projects?

6 A A lot.

7 Q Can you describe --

8 A So --

9 Q -- just a few?

10 A I worked for Thames and Moore, which became URS,  
11 which became ACOM, all large environmental contractors. URS  
12 and ACOM are Eagle 1 contractors, so there's only maybe three  
13 firms that can handle that. Anytime there's a hurricane,  
14 there's disaster, URS is there. Anytime there's a FEMA housing  
15 project going on whether it's Katrina, Floyd, Hurricane Sandy,  
16 URS is there and I was developing the networks for those sites.  
17 So specifically, early on I was down in the, went to assist USA  
18 aid in Guatemala. I was sent down there to build out the FEMA  
19 equivalent of Guatemala to help them get their network off the  
20 ground. And then recently we have ongoing projects and, no,  
21 ongoing projects overseas. There's some I can't talk about  
22 through NDA, but we have, they have ongoing projects overseas  
23 that I've left them.

24 And then we also have Hurricane Sandy relief efforts.  
25 Hurricane Sandy came in October. By the time money was cut

1 loose from the Federal Government say February, March, it takes  
2 another three months or four months for contracting at the  
3 state level, contracts issued in July. But the time we, and  
4 then we have to set up a network of five locations to hire 180  
5 staffers, so I have five locations to network, five routers,  
6 VPN mesh, and security because I have to report to the Housing  
7 Recovery Office of New York that has to happen in about three  
8 weeks' timeframe. And by the time you get all these inspectors  
9 on the ground and they go out and start inspecting houses, you  
10 have to have something to report to the governor by October and  
11 you've got a short window to get everything ramped up. So  
12 typically --

13 Q So --

14 A -- everything I've done has always been a short  
15 disaster relief related work.

16 Q And that kind of network is to actually receive  
17 information, privacy information, date of birth,  
18 (unintelligible).

19 A Yeah, because after, after disaster and people want  
20 money. They want money from the Federal Government and Federal  
21 Government has a ton of money to give them, the problem is how  
22 do you get that process turned around? So you have people  
23 coming in with their whole life. They have their mortgage,  
24 they have their social security card, they have banking  
25 information, they have everything they have to prove and show



1 that the house is damaged and then what they need is for you to  
2 take that securely, process it, not lose it, not have it  
3 compromised and stolen, and that way the inspector can get to  
4 their house, inspect their house and say this is the damage and  
5 they can get their check.

6 Q So you're the person that the Federal Government  
7 would call to do that, to create that?

8 A Well, yes, they would call URS, that's --

9 Q Uh-huh.

10 A -- actually they would just say as a disaster  
11 happened, you have, it's not even an IFP process. You have 24  
12 hours to respond. You have 24 hours to respond. You say, yes,  
13 we're in and then you just start going and the, the burn rate  
14 on dollars is quite high when you're trying to ramp up 1,000,  
15 2,000 civil engineers and building inspectors to bring them in,  
16 all these retired people that have retired as engineers and  
17 they want to ramp up. You need to get coordination to get  
18 those guys in their RVs to get them to New York, get them to  
19 New Jersey, all these, all these other towns, get them set up,  
20 hotels, everything in place.

21 You need to find locations where they can work. You  
22 have to make sure there's fast enough Internet connectivity and  
23 so, yeah, I would, my job was to oversee all of the network  
24 interconnects to make sure that wherever they were, they could  
25 operate securely and that they weren't operating at a bar,

1 some, you know, hotel where someone could look, easily look  
2 over their shoulder. And the same time I had the main, main  
3 sites throughout New York.

4 MS. CHOI: Okay. Your Honor, if I may approach the  
5 witness at this time?

6 THE COURT: Yes.

7 BY MS. CHOI:

8 Q Mr. Johnson, I'm showing you what's been marked as  
9 Defendant's Exhibit No. 21. Do you recognize that document?

10 A Yes, I do.

11 Q What is it?

12 A This is my resume from ACOM.

13 Q All right. And is it an exact copy of the original  
14 that you produced?

15 A Yes, it is.

16 Q And it lists all of your qualifications and your  
17 professional background?

18 A Yes, it does. The only thing missing is my current  
19 employment. I started in January with Broad Soft.

20 Q Okay.

21 MS. CHOI: Your Honor, I would move to admit at this  
22 time Defendant's Exhibit 21.

23 MS. KING: Unopposed.

24 MS. CHOI: If I may publish to the jury, Your Honor?

25 THE COURT: All right. Defendant's Exhibit 21 is

1 admitted.

2 MS. CHOI: Thank you.

3 (The document marked for  
4 identification as Defendant's  
5 Exhibit No. 21 was received in  
6 evidence.)

7 MS. CHOI: Your Honor, at this time, I would tender  
8 Mark Johnson as a qualified expert witness in the field of  
9 cyber-security information, as well as information systems  
10 securities.

11 MS. KING: State stipulates.

12 THE COURT: I will, the Court will accept the  
13 witness --

14 MS. KING: Can counsel just repeat --

15 THE COURT: -- as an expert, expert in --

16 MS. CHOI: Cyber-security specialist.

17 THE COURT: -- cyber-security as tendered by counsel.

18 MS. CHOI: So, for the record, Madam State, it is  
19 cyber-security specialist, information systems security.

20 BY MS. CHOI:

21 Q Mr. Johnson, how do you know Abe Mallik?

22 A He's my neighbor.

23 Q You're here testifying in court. Have you ever been  
24 qualified as an expert before?

25 A No, I've never been to court.

1 Q You've never testified in court?

2 A Nope.

3 Q And are you getting paid to testify on behalf of Mr.  
4 Mallik?

5 A No, I am not.

6 Q Then why are you helping him?

7 A I talked to Abe, I'm not sure when, and he said he  
8 had something that he, he said, we were cutting the grass and  
9 he said I know you work in, in, in IT and he said let me know  
10 if you know anybody that can help me and he loosely explained,  
11 he said he had something going on with this router potentially,  
12 he didn't know exactly what, but he had some charges and he  
13 wanted to know if I could, knew anybody that, that could help.  
14 So I said, well, let me, let me see some information you have  
15 and I'll, and I'll see who would best fit that.

16 So he sent me some information on, on the case. I  
17 looked at it and I talked to the wife and I thought about it  
18 and I said I, I have to help because when I looked at it, I  
19 immediately knew that I, it was something that I needed to help  
20 him with. Given the work I had done, I waited a few days  
21 because given the work I had done before with Poetic Justice, I  
22 don't volunteer my time willy nilly to causes that I don't feel  
23 are valid. And so I, I thought about it and decided, yeah, I  
24 should help.

25 Q All right. And so did there come a time where I

1 contacted you, reached out to you after receiving information  
2 from Mr. Mallik about you where I provided some information?

3 A Yes, you did.

4 Q And that was some of the police reports and the  
5 initial --

6 A There were some initial police reports. I'm not 100  
7 percent, remember exactly what was there, but, yes, there were  
8 police reports, I think reports on hard drives, a number of  
9 devices, confiscated hard drives/drives, cameras, things like  
10 that.

11 Q Okay. So you do remember receiving initially a  
12 police report with regard to the basis for the charges?

13 A Yes, I do.

14 Q Okay. And did you also receive any other documents  
15 that you reviewed pursuant to this testimony?

16 A I received reports, I believe I received police  
17 reports after I had submitted my initial report. I received  
18 those.

19 Q Did you also receive the cyber tip report that was  
20 provided in this case?

21 A I, yes, I received the cyber tip report from Google  
22 and information and log-ins and IPs from various service  
23 providers.

24 Q And with regard to the State's expert witness who is  
25 a computer forensic analyst, did I then pass along that

1 information to you?

2 A Yes. I've read the report from the (unintelligible).

3 Q Okay. And so it's, is it your understanding that you  
4 had two reports, one original report and then an updated report  
5 on, on top of the original?

6 A Yes, that is correct.

7 Q Okay. And do you remember the dates and time that  
8 the two reports were, if you recall?

9 A I want to say the first report was maybe a couple of  
10 months ago --

11 Q Okay.

12 A -- if that. And then the final report, or the last  
13 update, was maybe last week or, or early last week, if that.

14 Q Okay. And did you also receive some analysis and  
15 log-in information, some, I guess, a lot of different numbers  
16 on the spreadsheet, did you remember receiving that kind of  
17 document?

18 A I received most spreadsheets that would have made  
19 searching for certain things easy. There was a lot of  
20 photocopies of PDF documents I had, IP addresses, just pages of  
21 IP addresses and dates and times.

22 Q Do you recall approximately how many pages you may  
23 have reviewed since the time that you decided to actually help  
24 Mr. Mallik?

25 A Since then, maybe 1,500 to 2,000, I mean it's quite

1 substantial documentation.

2 Q Okay. And were some of those documents just multiple  
3 police reports, the same exact copies over and over?

4 A Primarily. The main focus of the documents are  
5 really results from scans, software scans, and showing registry  
6 logs and sub-folders and just real repetitive, repetitive,  
7 repetitive.

8 Q Okay.

9 A And, unfortunately, that's the nature of the tool, it  
10 just spits them out like that.

11 Q So you own a router?

12 A I own several routers.

13 Q Okay. This router that's involved in this case, is  
14 there anything significant about this particular router with  
15 regard to whether or not you have one?

16 A I have one only -- I have this exact model only  
17 because the hardware is good. The router itself is, is, is not  
18 good, but I, I own this particular model. The reason I bought  
19 this model was because it has good hardware, but I knew as soon  
20 as I could buy the router, I would flash it, which means I  
21 would just strip out the Asus programming software that ran  
22 with it and I would load a custom firmware, DD, DDWIT.

23 Q Okay. So what's the difference really, because I, I  
24 think a lot of the jurors --

25 A So --

1           Q     -- probably don't know all this language?

2           A     -- when you, when you buy a home consumer router, so  
3 a router, what a router does is just what it says, it routes  
4 traffic. So when you access the Internet, everything goes  
5 through your router and then your router connects to your  
6 Comcast or (unintelligible) modem and it goes out onto the  
7 Internet. That's just the connectivity point. How you get to  
8 where, if I tell my router take me to WashingtonPost.com, your  
9 router has no idea where that is, but it knows that it has a  
10 DNS, an address where it says, hey, goes out to eight dot eight  
11 dot eight dot eight, which is Google's DNS and it says tell me  
12 where WashingtonPost.com is. Well, DNS comes back and says,  
13 here, it's at this IP address, it gives it to your computer and  
14 now your browser goes straight to that address. And it happens  
15 fast, that way there's no lag and you get there exactly, so,  
16 and that's all a router does, it routes traffic from your  
17 internal network to points external in its base form, that's  
18 all it does.

19                     And so the router software you buy from Linksys, D-  
20 Link, Asus, these are honed consumer model routers and the  
21 software is simplified for home consumers. I'm not a home  
22 consumer, I need to do more with my router. I need to run  
23 servers behind my router. I need to, I need to do gaming  
24 behind my router, so I need to forward ports to, to speed up my  
25 gaming so I'm not lagging in a game. And so if, it's not



1 difficult, but you just find a router that has good firmware,  
2 you match it up in a database, say this is the model form I  
3 need, you download it, you load it and now you've taken a 200,  
4 \$250 router and now you have a \$600 firewall with a lot more  
5 features.

6 Q So you just created a firewall?

7 A Oh, absolutely, yeah.

8 Q Okay. Now with, with this particular router and the  
9 company in general, Asus, were they involved in a lawsuit with  
10 FTC?

11 A Asus, Asus settled two, I think it was February of  
12 last year, I think they settled for 206, maybe \$220 million.  
13 They were sued by, I think, I believe the FCC and I think there  
14 is another lawsuit pending with D-Link as well, another router  
15 manufacturer for similar and essentially they were selling  
16 consumer security products that were not secure. And they  
17 settled out of court and as of, and as a result, they have to  
18 be audited independent every two years for the next 20 years.

19 Q And what, do you know when this FTC began the lawsuit  
20 against Asus?

21 A I'm not sure when it began, but I, I know those  
22 routers have been vulnerable since almost as soon as they were  
23 released. Let's say, I mean they were, they were vulnerable  
24 late 2013, early 2014. There was a lot of chatter on the dark  
25 web about how easy it was to own these routers, meaning that

1 once you, you could get into this router and literally do  
2 whatever you wanted to do with one, one simple command line  
3 string. And there was a lot of chatter. By the time things  
4 like this usually bubble up to the surface where it's reported  
5 in the news and public knowledge, it's already been a couple, a  
6 year and a half.

7           Most of these, most of these routers that have been  
8 hacked usually, any firm that gets hacked, there's two, 300  
9 days before they even realize it. It's even worse for home  
10 consumers. So it's a good router hardware-wise. Good  
11 components, the software that runs it is just terrible.

12           Q     Okay. So when you spoke to Mr. Mallik about his  
13 router, your router --

14           A     Uh-huh.

15           Q     What, if anything, did he do with his software based  
16 on the information that you provided, that he provided to you?  
17 Did he change his software?

18           A     I, I advised him to look and see what devices were in  
19 his router, try and, try and look and see. It's a limited user  
20 interface, but I said just looking at the HCP list and that's  
21 the, so, and anytime a device joins your own network where  
22 there's wireless or hardwire, it gets an IP address and your  
23 router gives it that IP address on a lease. And the lease  
24 lasts a few days, it expires and it renews.

25                   I said look in the list, see if you see anything

1 that's not there and try to disconnect it or try to block it,  
2 put in, try to put in the MAC filter and he didn't know how to  
3 do a MAC filter. Not many people do. So I just said try to  
4 block it, try to block it.

5 Q Okay. So do you know when this kind of conversation  
6 took place, your recommendations? Do you know around what  
7 time?

8 A I know we were out working in the yard, but I can't,  
9 I cannot recall whether we were out raking up or cutting grass.  
10 It was, I think it was the early part of the year because I was  
11 out, I think I was out just raking up, trying to get up leaves  
12 and twigs and sticks to get ready for the spring grass season.

13 Q Okay. So, essentially, just very briefly, what is  
14 the significance of this lawsuit that Asus was defending itself  
15 on and what, I mean what does that really mean to the jury with  
16 regard to this router?

17 A What it means to everybody is that Asus lied.  
18 Essentially, Asus was, Asus was selling routers that they knew  
19 were defective. When you have your router, they make it  
20 simple. They put a little check for updates on, in the top,  
21 right-hand corner screen and check for updates. The button  
22 didn't do anything and the FTC found out and, and that's why  
23 they were sued.

24 There was a, there was a subroutine in the  
25 programming that would just go out and check on schedule and it

1 would check a site, <http://asus> something, something, and it  
2 would check for an update. So even if you called and they  
3 said, hey, something is wrong with my router, they said, oh,  
4 check for updates. Oh, there's no new updates, there's nothing  
5 wrong with it. It wasn't going anywhere.

6           And so what happened, when these routers were hacked,  
7 people were able to easily get into the Asus software, change  
8 that location and then when you, and they actually enabled that  
9 button. So when you checked the button, yeah, it went  
10 somewhere. It went out to where they wanted it to go and it  
11 pulled down a hacked a firmware copy of the Asus software.  
12 What that enabled them to do was to backdoor your router. So  
13 now someone owns your router. They have a backdoor into your  
14 network.

15           Q     Okay. So what is the definition of a hacker in just  
16 very simple terms?

17           A     Breaks, someone that breaks into your computer,  
18 technologies that's not theirs.

19           Q     With regard to the Comcast and a lot of people don't  
20 understand what an Internet servicer is versus what a router is  
21 because I believe it's not a very easy field to understand, you  
22 heard some testimony from Mr. Mallik with regard to calls that  
23 he made to Comcast in, February the 12th or so. Do you have  
24 experience with regard to Internet service providers and how  
25 limited or how much they help when there is some problem with

1 Internet connection?

2       A       Every Internet service provider is essentially a WAN  
3 operator, wide area network. Anything inside your home is your  
4 LAN, your local area network. When you're at work, anything  
5 inside your work is a local area network. Any of the networks  
6 that service this courthouse and this facility, these are all  
7 local area networks. As soon as you leave here and you go  
8 through a router and you want to connect to another  
9 municipality or to another officer building or, not another  
10 office building close by, but let's say you wanted to connect  
11 to another office in Seattle or you wanted to go onto the  
12 Internet, you need a carrier, and your carrier used to be, say,  
13 AT&T, but they, you know Ma Bell broke up. So now, and then  
14 you had, Sprint had backbone, so now it's broken up even, even  
15 further.

16               So an Internet service provider, their job is to give  
17 you access to the Internet. That's their job. So they have no  
18 concerns and no jurisdiction to touch anything inside your  
19 local area network. They stop at the cable modem. So  
20 sometimes they own the cable modem and they own the router.  
21 Comcast sells, leases devices, I think \$7 a month now, that has  
22 a router, cable modem and wireless all built into one, but even  
23 then the most they will do then is get into that device with  
24 your permission, but once it gets inside the network, they,  
25 they have no concern about that. All they need to know is

1 you've signed up for blasts or performance Internet. I'm  
2 delivering that to you, the rest is yours.

3 MS. CHOI: If I may approach the witness with  
4 Comcast --

5 (Discussion off the record.)

6 BY MS. CHOI:

7 Q So, Mr. Johnson, I'm going to show you what's already  
8 been marked as Defendant's Exhibit and admitted. Can you take  
9 a look at some of the entries regarding some of the service  
10 calls?

11 THE COURT: Which exhibit is this, Ms. Choi?

12 MS. CHOI: It is Exhibit, Defendant's No. 5.

13 THE COURT: All right.

14 MS. CHOI: And it is the service calls on February  
15 the 12th right here.

16 BY MS. CHOI:

17 Q Are you able to decipher some of the notes with  
18 regard to those calls?

19 A Yes, I am.

20 Q Okay. What essentially does that all mean?

21 A So at 2/12, February 12th, 2:57, 30 seconds, Abe  
22 Mallik contacted Comcast and said, even hardware, so not even,  
23 typically if you have a slow Internet connection or you say,  
24 hey, Comcast, my Internet is slow, what they say is, okay, well  
25 go plug it into the router because what they want to do is

1 eliminate any slowness between your wireless connectivity and  
2 your router. So he plugged in, plugged his laptop to the  
3 router and said he was only getting 12 megabits a second. And  
4 so they transfer him to HSI. I have no idea what HSI is, but  
5 that's where they transferred him to.

6           Upon talking with HSI at 2:49, 35 seconds, they told  
7 him that they were showing he was getting 29 megabits a second,  
8 that the speed was correct because he had performance and 29, I  
9 believe 29 megabits per second is Comcast's performance  
10 Internet class. So what they test is when you're at home and  
11 you test your speed going out, you can go to speedtest.net or  
12 speedofme. When Comcast tests, they don't use any of that.  
13 They, they essentially test their internal network. They want  
14 to know the quality of their service line, are there any  
15 service outages in your area, is your router online and  
16 available and if it is, then you're getting speed they said  
17 they're giving you.

18           Q     And so those calls were made on February 12, 2016?

19           A     Yes.

20           Q     Okay. And so does it state how long the calls are,  
21 if you can decipher that? If not, that's, I can withdraw the  
22 question.

23           MS. CHOI: If I may approach the witness, Your Honor?

24           THE COURT: Yes.

25           BY MS. CHOI:

1           Q     Mr. Johnson, I'm showing you what's been marked as  
2 Defendant's Exhibit 22. Do you recognize this document?

3           A     Yes, I do.

4           Q     And what is it?

5           A     This from the FTC, FTC.gov. This is their public  
6 release stating that Asus has settled charges that insecure  
7 home routers and Cloud services put consumers' privacy at risk.

8           Q     Okay. And is this a copy of the information, the  
9 original information that you, you saw?

10          A     Yes, it is.

11                MS. CHOI: Okay. Your Honor, I would move to admit  
12 Defendant's Exhibit 22 at this time.

13                MS. KING: No objection.

14                THE COURT: Defendant's Exhibit 22 is admitted.

15                MS. CHOI: Thank you, Your Honor. If I may publish  
16 to the jury?

17                               (The document marked for  
18 identification as Defendant's  
19 Exhibit No. 22 was received in  
20 evidence.)

21                BY MS. CHOI:

22           Q     And, Mr. Johnson, this exhibit essentially explains  
23 exactly what you were talking about in terms of the lawsuit and  
24 the security breaches of these routers?

25           A     Yes, I believe it does.



1           Q     I'm going to ask a very important question. What is  
2 a VPN and what does it do, and how can you help us understand  
3 exactly why it's important in this case?

4           A     A VPN is a, creates a technical term, it's a virtual  
5 private network, but no one understands technical. So think of  
6 it this way. If you were, if you were leaving from here and  
7 you were driving to New York and you were going, and you wanted  
8 to get to Baltimore and then once you got to Baltimore, you  
9 didn't want anybody to see or be able to track you or you  
10 wanted to protect yourself when connecting or going to anywhere  
11 beyond Baltimore, you go through the Fort McHenry tunnel.  
12 There's a tunnel. Once you go into that tunnel, nothing can  
13 see you or touch you when you're inside of that tunnel until  
14 you come out on the other side. When you come out the Fort  
15 McHenry tunnel, you can go to Philadelphia, New York and catch  
16 a plane to London, come back, and when you come back out of  
17 that tunnel, now everybody can see you again.

18                     Essentially, that's what a VPN does. It creates a  
19 secure tunnel from you, initially it started out as people VPN  
20 in, working VPN, working remote, connecting to work. So you're  
21 at home, you fire up your VPN, you create a secure connection  
22 between your home router, home computer to your work network.  
23 Once you're connected, everything flows from your computer  
24 through to your work computer or work network and back to your  
25 home computer. Nothing from the outside can get into your

1 work, Internet VPN tunnel unless your work checks a box and  
2 they allow you to browse the Internet, which would then go out  
3 here and then back to you. If not, everything, even Internet  
4 traffic, goes through the VPN and back to you.

5           So it's a, it's a secure way to browse. A VPN has  
6 become much more popular now. GDPR, General Data Protection  
7 Regulation, kicks in in Europe next year. Business firms are  
8 required to protect their individual privacy. In the U.S., all  
9 of these, where there's HMA, private Internet access, Viper,  
10 Cyber Ghost, all of these VPN firms, they all saw a big jump in  
11 membership this year and also --

12           Q     And why is that?

13           A     Well, so the Republican Congress rolled back, so  
14 what, what happens is when you, there's a massive amount of  
15 data aggregation and data aggregation is simply taking snippets  
16 of data from all over the web, different points of presence  
17 that you have and aggregated them all into, into a profile.  
18 And what's happened is Facebook has used it, Google is using  
19 it, all of these marketers use it, which is why if you go on  
20 Google and you search for anything, you go to Facebook, five  
21 minutes later there's those shoes you just looked up on Google.  
22 Now they're on Facebook because your, your data has been sold.

23                   Comcast and every other service provider has said,  
24 you know, the Obama regulations say, look, it's, you're not out  
25 to, your job is not to make money off of consumer's data. Your

1 job is to provide them unrestricted access to the Internet.  
2 However, now with the regulations rolled back by the Senate, I  
3 believe it was in January, maybe February this year, those  
4 Comcast, Xfinity, everybody else now, they can sell your data  
5 and they know where you're going to search because your router  
6 connects to them and your searches, they know your searches,  
7 they know what you're looking for, they know the sites you go  
8 to and so as soon as you leave your network, you go through  
9 them and back and they capture all of that. And so that's what  
10 they're able to now market and sell.

11 And so people have said, privacy advocates have said,  
12 look, just get a VPN. So it's very cheap, you install it and  
13 now what happens is instead of your point of presence, your  
14 POP, the point at which you appear on the Internet, instead of  
15 it being right here at your house, you can set your point of  
16 presence to New York. You can connect to a VPN server in New  
17 York and so now everything goes to the tunnel in New York and  
18 when it pops out, you'll do whatever you want. You can go to  
19 your bank site, anything you want, and then come back.

20 The only, the only issue you might have is if you're  
21 connected to a VPN point of presence in Canada and now Bank of  
22 America says, hey, you look like you're coming from Canada and  
23 you, you can't sign in to do banking, things like that.

24 Q Okay. So with regard to this VPN called HMA --

25 A Uh-huh.

1 Q -- Hide My Ass --

2 A Uh-huh.

3 Q -- have you heard of that before?

4 A HMA is, HMA is the most popular, I mean if you Google  
5 VPN, home VPN, HMA is at the top of the list. And they're top  
6 of the list because they have search optimization, which, which  
7 means they have search, search specialists that, that dig  
8 through all the Google search terms and crawlers and they know  
9 that if we put these key words here and they keep pushing them  
10 to the top of the list, they have advertisement space at the  
11 very top of the Google search. So this is your, this is the  
12 number one use.

13 But also they were the VPN of choice for hackers  
14 because they're the largest company. They have point of  
15 presence in more countries around the world than anybody. I've  
16 used HMA in the past. If I wanted to, I grew up in London, if  
17 I wanted to watch a TV show or a football match that was on TV  
18 in England, I'd fire up my VPN, I'd connect to London and now  
19 it sees me as being local in London and I'm watching it. Or if  
20 I'm overseas and I want to watch something back in the States  
21 while I'm traveling, I fire up my VPN and I connect back to  
22 Maryland or New York.

23 So HMA was the VPN of choice for hackers and that's  
24 what they used when they hacked Sony and, and that's how they  
25 got caught. Sony was hacked and, Sony was hacked and they

1 settled with employees for multi millions of dollars for not  
2 protecting their, their private information. But  
3 investigators, CFA's, were able to go through the logs, go  
4 through the router logs and see the VPN connections from a  
5 couple of IP addresses. They traced it back to, I think, it's  
6 Privax is the owner of HMA. They went there and they said send  
7 us this information, discovery. They found out it went to a  
8 certain individual overseas, I think it was, I'm not sure  
9 exactly, but they went to his house and they arrested him and  
10 said that was the hacker.

11           So now in the dark web, there was a lot of chatter  
12 about, yeah, everyone was using VPNs, but now you have to  
13 change the way you use them. You can't, because it was --

14       Q     What do you mean by that?

15       A     Well --

16       Q     -- change the way you use it?

17       A     -- you use a VPN to obviscate your location. It, you  
18 don't want people to know where you are. If you're a hacker,  
19 you don't want people to know where you are because then they  
20 come knocking on your door say, hey, you just stole my stuff.  
21 It's not a very good criminal.

22           And so what you do is you, is you change the way that  
23 you use it. Instead of you signing up for it, it's a more of  
24 a --

25       Q     You mean the hacker.

1           A     Yeah, and, yeah, instead of the hacker signing up for  
2 the service themselves, you use more of a roundabout way. You,  
3 you go on the dark web and you, you can either process these  
4 tools yourself using hacking tools that are readily available,  
5 well-known, and you can either hack someone or you look for  
6 exploits or vulnerabilities. They're all vulnerabilities, zero  
7 day vulnerabilities, zero day something where it's a  
8 vulnerability in hardware/software that is out in the wild that  
9 people know about, but the manufacturer doesn't know about yet.  
10 Those are zero days. And because it's out there, it hasn't  
11 been identified. So, and there's a lot of them. And so with  
12 all these zero days, you find one and you may find routers are  
13 vulnerable. That's why Asus took several years before the  
14 lawsuit and everything finally bubbled up to the surface. It  
15 was a zero day forever.

16                   So a hacker will find this and he'll either buy  
17 access from someone who has five or 10,000 computers that he's  
18 already hacked and he's just sitting there waiting to sell them  
19 off in a bunch or they'll download the tools and do it  
20 themselves. And once you do that, the goal is to own that  
21 router.

22                   Once you own the router, then you can pretty much do  
23 anything you want inside that network. And the goal is you  
24 want control of the router so that now when your Internet  
25 traffic leaves your house, it doesn't go to the router and into

1 Comcast and out, it goes to the router, it comes to me and then  
2 out. So what I've done is I've, it's called a man in the  
3 middle attack. I've, as the hacker, I've placed myself in  
4 between you and Bank of America. So now anything you send goes  
5 to your router, to me, to the bank. And so I see everything  
6 you've got going through to your bank and everywhere else.

7           So that's why you've changed the way it works is  
8 because so now instead of me signing up for VPN with my address  
9 and everything else, I collect enough information from, from  
10 you, from your computers so that now when I run say a man in  
11 the middle attack, or as other malware from phishing or from  
12 sites, drive-by sites that get on your computer, now I just  
13 wait until I have your credit card information. Now I sign up  
14 for VPN, HMA or private Internet access and I use your address.  
15 So if anything should happen to me now, all the connections are  
16 from you and nothing comes to me.

17           Q     Uh-huh. So with regard to some of the testimony that  
18 you heard today, the HMA receipt has several dates on it.

19           A     Uh-huh.

20           Q     The very first date is February 9, 2016, which is  
21 about the date where Abe was having some problems with the  
22 Internet. The other date is August of 2015. And then Steven  
23 Gibson, the State's expert, testified that the installation  
24 date on Abe's computer, the Acer, the offending computer, was  
25 March 23, 2016. So with all of these different dates and the

1 receipt that the jury has already seen, how in the world after  
2 Mr. Mallik has testified that he didn't serve --

3 MS. KING: Your Honor, counsel is testifying to her  
4 question.

5 MS. CHOI: It's, it's a complicated question, Your  
6 Honor.

7 THE COURT: Let's get to the question.

8 MS. CHOI: Thank you.

9 BY MS. CHOI:

10 Q How do you reconcile the fact that there's a date of  
11 purchase on August 2015 when he testifies that he purchased it  
12 on 2009, I'm sorry, February 9, 2016, how is that reconciled?

13 A The changes of him being hacked and actually noticing  
14 the hack within any short period of time is virtually nil.  
15 Companies that have people that, like me that work for them,  
16 and even security analysts, SOC analysts, the average time is  
17 200 days from when they're infected to when they even know  
18 about it. And these are people that have trip wire, packet  
19 analyzers, everything that looks, every instance of traffic on  
20 the network and they still go several hundred days.

21 So for a homeowner with a router to know he was  
22 hacked, it's going to take a long -- it's going to have to take  
23 something to happen for you to say something is not quite right  
24 here. If the router was hacked and purchased, if the router is  
25 hacked and I, and I change your DNS, so instead of your DNS



1 being public DNS, say eight dot eight dot eight dot eight, or  
2 eight dot eight dot four dot four, those are Google's DNS. If  
3 I change those to my DNS and now I have a man in the middle  
4 attack set up, everything you have comes to me. Once I have  
5 your credit card information, I sign off from HMA VPN in this  
6 instance and I install it on your router because you have to  
7 find a specific model router that it will work with, but you  
8 can install it on the router and now that way you don't have to  
9 worry about trying to install VPN software on every individual  
10 computer or device you have in your house. It could be limited  
11 on how many devices you can install it on. You install it on  
12 the router and now instantly anything that comes out from you  
13 goes to that VPN tunnel and comes out without being monitored  
14 by Comcast and your data being sold.

15           And so when, when you're a hacker and you, and you do  
16 that, no one knows you've done it because especially now, now  
17 it's done and I have what I want. I can either leave the man  
18 in the middle attack going if I want to try to get banking  
19 information, which sometimes happens, sometimes doesn't, but  
20 typically they would just revert back to speed up your Internet  
21 again, to not slow it down, run everything through your normal  
22 DNS and now you're just going out. You would, unless you did a  
23 geo IP location look-up to say not just where is my address,  
24 but what's my location, if I was a home in Point of Rocks and I  
25 said what's my location, it would say, it would show Frederick,

1 Maryland, because that's my point of presence. That's where  
2 Comcast is.

3 If I have VPN and did that, it would show New York or  
4 St. Louis or Seattle, wherever I popped out onto the web.  
5 People don't do that. People don't look up. So the chances of  
6 that individual or that homeowner knowing that his router has  
7 been hacked and VPN set up on the router, it's like --

8 Q So then is your testimony based on the information  
9 that you had is that this hack didn't happen February 2016 --

10 A No.

11 Q -- it happened earlier?

12 A That hack was way before then. Yeah, yeah, it's,  
13 it's more than likely that this hack took, took place, this  
14 was, this vulnerability came out in late 2013, chatter was  
15 2014, so you've got a good -- anywhere between 2014 to 2016 for  
16 something to have happened.

17 Q So, well, I guess, so the hacker, assuming that  
18 there's a hacker, so is your testimony that essentially  
19 whatever Abe is doing on his like online shopping or whatever,  
20 he's just extracting that credit card information --

21 A Right.

22 Q -- and he could simply put it in there and, and make  
23 it appear that he's purchasing --

24 A Anything --

25 Q -- HMA?

1           A     Anything you're typing in I'd have a copy of it,  
2 anything whether, whether it's an e-mail, you're logging into  
3 your bank, anything you're typing in, if your router is hacked  
4 and your router has VPN or the man in the middle attack, I  
5 would know, I would, I would have a text copy of everything  
6 you're typing in.

7           Q     Okay. So it's my understanding for this particular  
8 case that the analysis that was done by the computer forensic  
9 analyst and, as well as the potential rebuttal witness, is that  
10 there was no evidence of a key logger?

11          A     Uh-huh.

12          Q     What does that mean?

13          A     A key logger can be hardware or software. If a key  
14 logger is installed, it can be a little USB thumb drive that's  
15 plugged in and it essentially captures keystrokes. It's a key  
16 logger. It captures any keystrokes that's typed on a computer  
17 and it just stores it right there. It's why firms want to  
18 physically protect their computers and have access cards  
19 because someone could walk in, plug a thumb drive in and walk  
20 away and then come back several weeks later and pull that thumb  
21 drive out and now they would just go through and see anything  
22 that was typed on that computer.

23                Most key -- that's a hardware key logger. Most key  
24 loggers are software and they're either malware that's put,  
25 delivered to their computer either from remote shell software

1 that's pushed, drive by, just visiting, just visiting a website  
2 you can, you can just, the malware can be pushed to you and you  
3 haven't clicked anything yet.

4 Q So the instance with regard to this case --

5 A Uh-huh.

6 Q -- where there is the testimony was that there was  
7 200-plus unwanted programs, can you tell the jury what the  
8 significance of that is?

9 A Well, when you run, so, there's several things here.  
10 Malwarebytes is not an anti-virus program. A virus is a form  
11 of malware. Malware is just an all-encompassing term. So you  
12 have virus, which is destructive, and you have spyware, which  
13 kind of looks at what you're doing and then malware just  
14 oversees all of them. But when you have a malware scanner,  
15 what it scans for is things that it knows. It scans for  
16 signatures. Somewhere someone in the world had to eat the  
17 bullet and, and enough people had to get hit to where all of a  
18 sudden there's enough traffic being generated from these  
19 computers. Sometimes it's a few, sometimes it's a few thousand  
20 computers.

21 When Want to Cry hit a few weeks back, it turned out  
22 it was really about 50,000 computers before security  
23 researchers around the world started saying, hey, look what's  
24 going on. Something is going on here. That's when, that's  
25 when people started to recognize that they didn't shut it down

1 until it almost, 350,000 computers infected.

2           So a malware scanner scans for what it knows. So if  
3 something like Want to Cry happens, security researchers take  
4 that code and they break it apart and they see how it does,  
5 what it does, and then they create a signature file,  
6 essentially a look-up table, a definition, and said, okay, this  
7 signature file matches up to this malware. When you see  
8 something like this, flag it because we know that this equals  
9 this or close to it.

10           And so what malware scanners do is they scan. That's  
11 why you get definition updates and that's what there is. A  
12 definition update is a new list of these flags, these little  
13 files, six signature files, and it says, okay, now I'm going to  
14 look, I'm going to look for all of these. If I find one, here  
15 it is. So in the past I've seen computers with a thousand, 500  
16 to 1,000. I just format that computer because realistically  
17 you're never going to clean that computer. You just format it  
18 and start again.

19           Q     A thousand?

20           A     A thousand, 900 to 1,000. It's just format the  
21 computer and start all over again because you're wasting days  
22 trying to clean it because it's self-replicating, polymorphic  
23 and it just keeps changing, keeps re-infecting, just format it.

24           Q     Two hundred and something, yeah, it's up there. It  
25 depends on what it is. So in this instance there were 200

1 POPs. POPs is a potentially unwanted program. It doesn't  
2 necessarily mean it's malware. It could be, it looks similar  
3 to this, but it's not sure, so it flags it. And there's a  
4 number of things that can have that and which is why it flags  
5 it before it says, or instantly quarantine it and get it off  
6 your computer because if it quarantined everything that was a  
7 POP, there's a lot of valid programs you would not be able to  
8 use.

9           So when there was no key logger specifically found,  
10 and this is where, really this is the, this is where things  
11 have changed since 2014, 2015. Seventy percent, this was a  
12 Kaspersky report from this February, I believe, March, that  
13 Kaspersky is a big anti-virus software maker that is installed  
14 in a lot of Federal Government computers, but maybe not for  
15 long. Seventy percent of all the infections they see now on  
16 client computers all have file-less malware, runtime malware.  
17 It means there's no file. There's nothing to search for. They  
18 exist only in memory. If the computer is shut off, they're  
19 gone.

20           And so there's, the only, the only way you can  
21 capture that at the time you look at that computer, and every  
22 security researcher will tell you, it used to be, okay, turn  
23 off the computer, shut it down, we don't want to infect the  
24 rest of the network.

25           Q     Uh-huh.

1           A     You can't tell people that now. You just say unplug  
2 the network cable or disable the Wi-Fi. Let me get to the  
3 computer because what they want to do is they want to get to  
4 the computer and they want to run software and they want to  
5 scan the memory and they want to look at the memory and they  
6 want to start looking at packets and see if they can find  
7 something going on, see what's running and see if there's  
8 anything in there. So if, if the computer shut off, there's  
9 nothing to find.

10          Q     Okay. So based on the information that you received  
11 throughout this trial, with regard to the malware --

12          A     Uh-huh.

13          Q     -- and there, there's going to be, I think that there  
14 were no traces of it, how do you explain that if Mr. Mallik's  
15 position is that he believes he was hacked, there was  
16 200-plus --

17          A     Uh-huh.

18          Q     -- unwanted programs and there's no residual  
19 information on the Acer laptop, how do you explain that?

20          A     The same, the same reason that there, that the router  
21 was, all of a sudden died and cannot be accessed. The router  
22 was bricked. So what happens is if --

23          Q     The router was what?

24          A     When, when you brick a router, meaning that you've  
25 had access to it or you've tried to, you bought it, you tried

1 to update it, you tried to install your own customer firmware  
2 and you failed. It's now about as useful as a brick. You're  
3 never going to get back into that thing. It's just  
4 electronics. It has nothing to do with it. You have to just  
5 throw it away.

6           So if you brick a router, an attacker or threat  
7 actor, I keep wanting to say, I keep wanting to say threaten,  
8 we use the term hackers, really a threat actor is what it's  
9 called. So when a threat actor hacks into a router, they have  
10 control of that router. At any time they feel that they have  
11 been compromised, they brick the router.

12           The same with any malware. If they feel that their,  
13 that they have been compromised, it's self-destructive malware.  
14 And the reason, and the reason you do that is that you have  
15 malware that's installed. It phones home every three hours,  
16 every four hours, every six hours. It's just a little ping  
17 that says, hey, I'm here, just like an old World War II  
18 submarine movie where the submarine is under water and it pings  
19 and it comes back. It just lets them know that he's here, but  
20 then if something happens, it will shut down and disintegrate.

21           Q     Okay. So when you say compromised, does that also  
22 mean found out?

23           A     Yep.

24           Q     Okay.

25           A     That means, that means, that means I've been



1 discovered.

2 Q Okay. So with regard to the IP address, can you very  
3 simply explain what that is with regard to what's happened  
4 here?

5 A Well, which, which IP address, from Comcast, from --

6 Q So there's an IP address by home --

7 A Uh-huh.

8 Q -- that is involved --

9 A Uh-huh.

10 Q -- with some of the uploads --

11 A Uh-huh.

12 Q -- of this child porn. But there's also the IP  
13 address which is called 70, I'm going to just label it for  
14 reference, 74 is the HMA --

15 A Okay.

16 Q -- IP address for the Hide My Ass VPN. And that's in  
17 Ashburn, Virginia.

18 A Uh-huh.

19 Q And then there's also the IP address at Mr. Mallik's  
20 home and it starts with a 76.

21 A Okay.

22 Q And so with regard to your testimony, how did this  
23 hack occur with regard to Mr. Mallik's situation with a router  
24 and, actually, strike that question. Just what is the IP  
25 address in general in a very simple term?

1           A       That's your house address. That's as simple as you  
2 can get it. Your house is a physical address. Everyone lives  
3 in a house or an apartment on the street. It has an address.  
4 There are only so many addresses in the world. You may, it's a  
5 four (unintelligible) number, so it could be 74 dot something  
6 dot something dot something, but that IP address is unique to  
7 you and you alone. No one else has that IP address. So if  
8 that, I think you said the 76 was --

9           Q       Was the home.

10          A       Was the home. When you turn on your router and it  
11 goes out to Comcast, Comcast has a block that they have  
12 purchased. That's a block they own and they cycle that through  
13 various customers. They give your house an IP address. That  
14 will stay at your house, IP address, until it gets renewed and  
15 it's renewed usually every week. And the reason they do every  
16 week is so that if someone leaves, they can take that IP back  
17 and give it out to someone else. And unless something happens,  
18 you move, you typically just stay with the same IP address.

19                 VPN, it really depends on where you connect. So if I  
20 connect to Seattle through say HMA, that Seattle server will  
21 have a different block of IPs than say the VPN server in New  
22 York and the VPN server in Ashburn had a 74 block of IPs. And  
23 now you know who owns that block because say, for instance,  
24 the, the, the 76 block, Abe doesn't own that block, Comcast  
25 owns it. So you can find out who, who the owner is of these

1 blocks of IPs.

2 Q So with regard to the, the, I understand the way of  
3 hacking cyber security, that there are different phases.

4 A Uh-huh.

5 Q So can you just explain to the jury exactly how this  
6 hack occurred based on the information that you have?

7 A Yeah, hacking is, cyber-crime is just like any other  
8 crime. There's a certain method of operation that, that goes  
9 into it where the, where the, the typical belief is that it's a  
10 14-year-old kid living in his mom's basement when reality is  
11 it's a multi-billion dollar organized crime business at the  
12 highest levels. And somewhere in between is everything you can  
13 imagine, just drive-bys and everything else. So --

14 Q So there are hackers for sale, so you can hire  
15 hackers?

16 A Yes. Yes. There's hackers for sale, there's  
17 ransomware as a service, so you can pay, I think the going  
18 price I just saw was \$3,000 a month to ransomware as a service.  
19 So Want To Cry was ransomware. So you can sign up for  
20 ransomware as a service where it, where you pay 3,000 a month  
21 and you get everything you need, just hit the go button and,  
22 and targets and you're paying, ransomware is spread out in  
23 phishing e-mails or targeted attacks or, or using any zero day  
24 vulnerabilities and whatever you get back in bit coins, there's  
25 a certain percentage that goes off the top as well.

1           Q     So with regard to this particular hack and this kind  
2 of particular hack, hackers for hire, how much --

3           A     Yeah, you --

4           Q     -- is the going rate?

5           A     -- can, it depends on the, now any ethical hacking is  
6 a, is a certification, it's a career. And any --

7           Q     Is that what you are?

8           A     No, I don't, no, I, no, I'm not an ethical hacker.  
9 I'm not a certified, ethical hacker. I, I did study hacking  
10 only, only to the -- because if you're going to be a hacker,  
11 it's an art. It constantly changes. New tools come out every  
12 few months. It evolves. You have to stay on top of it. I  
13 really don't want to stay on top of it to that degree. I want  
14 to know how they do what they do. I want to know the big tools  
15 they, they use and then from there I can know how I can defend  
16 from it.

17                     So hackers in general usually have really good jobs.  
18 They're usually programmers. They're usually security  
19 engineers somewhere. So what I believe happened in this  
20 instance is that, yes, this router had a known vulnerability.  
21 This is not the first case of someone being hacked through an  
22 Asus router. Several thousand reported cases of people being  
23 hacked and vulnerable through this router. So I believe the,  
24 there's a recognizance phase that occurs.

25                     And during recognizance or foot printing, you

1 identify your target. Sometimes it's just through just mass e-  
2 mail phishing. Sometimes it's targeted phishing where I know  
3 if you're a CEO, I'm going to look for you because I know your  
4 firm has the money. Other times if I'm a hacker for hire, I've  
5 already harvested a bunch of machines and I'm waiting for  
6 somebody to hire me and maybe do something to somebody or I can  
7 use those same skills to hire me and I'll target one person.  
8 Just let me know who I need to go after and I'll find them. I  
9 can scan around the web. I can do multiple Google searches,  
10 Facebook, LinkedIn, there's a whole gold mine for where people  
11 work, live and you can aggregate this data and once you find  
12 them, then you can, and you know that router has a  
13 vulnerability, you hack the router.

14           Once you hack the router, so that's the first, so  
15 recognizance is the first step. Then you need to get access.  
16 So you hack the router. Then you need to establish permanence.  
17 You need to, you need to get somewhere inside that network.  
18 And what you're looking for is one computer, ideally two or  
19 three computers, even more, never just one. You want more. So  
20 you want to establish a base of operations on one computer.

21           Now how do you do that? You know once that you have  
22 access to a network, you can ping all of these machines,  
23 devices inside the network and they'll happily tell you back,  
24 hey, I'm a windows computer. And as soon as they tell you  
25 Windows computer, you go into Metasploit, which is a hacking

1 tool, hacking operating system that all penetration tests is  
2 used and you say, Windows exploit launch and it will just  
3 launch all these Windows exploits and eventually it will get,  
4 it will find something that works.

5           Once you're in there, the first thing you want to do  
6 is find out who the user credentials are. You get the user  
7 credentials and then you send over a power shell script. And  
8 your power shell script is, is where the, is where the fun  
9 starts. The power shell script will then escalate your  
10 privileges from a limited user to an admin user. That will  
11 allow you access to the SAM, the security accounts manager,  
12 where all you, all your users that have logged into your  
13 computer, all the passwords are there. It then takes a copy of  
14 that and sends it back to me.

15           So now I'm sitting wherever I live and I have a copy  
16 of your SAM. Now from there, then I can crack it, and it's  
17 very easy to crack the SAM. Any computer for -- this is  
18 essentially what a CFA does when they want to get into a  
19 computer that's locked. They access a SAM and they crack the  
20 SAM. There's tools that will do it very easily for you. If  
21 it's a complex password, there's, there's tools that can do it  
22 even faster. There isn't any windows eight-character password  
23 that can't be cracked in under four hours, no matter how  
24 complicated it is. And you can, it's every single one.

25           And so now you have access. You have your admin

1 credentials. Now you want to move laterally. You don't want  
2 to use that computer as your base. You want to go from that  
3 computer and branch out to any other computer that's on that  
4 network and use -- once you get into that computer, then you  
5 use that computer. And from that computer, then you move  
6 vertically. If you don't already have router access, you  
7 attack the router. If you have, and if you have the router,  
8 then now you install your, your key logger or your remote  
9 access trojan. Typically, a remote access trojan can run as a  
10 POP. It can also just be disguised sort of as, it just looks  
11 like normal software. I mean it's very, it's very difficult to  
12 sell security products because there's always this claim that  
13 it's better than this, it's better than this. It's a new  
14 generation, when really they're all, they all do a similar  
15 thing.

16           And so once you have access, then you just sit there  
17 and you just wait. And if we had access here, I could log into  
18 my computer on my phone from home here. I could log in, okay,  
19 and once I'm signed in, I could move the mouse around and at my  
20 home the mouse would be moving on the screen. If --

21           Q     While you're here, while you're here and you're  
22 accessing your computer on your screen?

23           A     Yeah, absolutely. So you're opening files in folders  
24 and at home you're opening files in folders. Now to anyone at  
25 home, it would look a little weird. So if I was here, I could

1 just say lock the keyboard, lock the screen, lock the mouse.  
2 That way somebody walking by, the screen would be blank, the  
3 keyboard wouldn't work, the mouse wouldn't work, but I would  
4 still have full access and it would look the same as if I was  
5 sitting just in front of it.

6 Q So are you talking about also with regard to Mr.  
7 Gibson's report there were little images left, mini images  
8 called thumb cache?

9 A Oh, thumb cache?

10 Q Right. And so is that a way to leave the little  
11 mini-images as if you are, in this case, Mr. Mallik, the  
12 State's position is that Mr. Mallik opened up his Acer laptop,  
13 took a look at all of the child porn, three child porn, and  
14 that all the other child erotica and then left all of these  
15 thumb cache mini images?

16 A Any --

17 Q How is that possible?

18 A Anybody who works for --

19 Q And you did do it?

20 A Anyone who works for a firm that has a help desk or a  
21 remote tech support site, they'll call you up and say, yeah,  
22 you had a ticket in, I'm going to connect your computer, work  
23 on your computer and you're sitting there and then the screen,  
24 the mouse starts moving and they'll start opening things up on  
25 your --



1 Q Yes.

2 A -- that's not you, but it's you. It's your user  
3 account.

4 Q Yes.

5 A And so anything that's open on the screen is under  
6 your user account, not the help desk tech. And so the  
7 privileges at that time are whatever privileges you have, not  
8 the help desk tech. And they do, and then once in a while they  
9 say, okay, I'm going to blank your screen, one second, and the  
10 reason they do that is because typically at work you have a  
11 limited access and what they want to do is put in an admin  
12 password to install some software and as soon as they start,  
13 they unblack your screen and you can see what's going on. But  
14 anything that happens when they're connected in a remote  
15 desktop session, not a remote desk, it's a little -- yeah.  
16 Anything that happens when they're connected remote is  
17 happening under your user account. Those thumb caches are  
18 under your user account, any Google search histories that  
19 happen, that's under your account.

20 Q So that's why the little images are appearing as if  
21 he actually opened up his laptop and saw these images?

22 A The computer doesn't know who is physically there.

23 Q Okay.

24 A All it knows is that User X is logged in with this  
25 password and this is User X's session. Anything that happens

1 is under User X.

2 Q Okay. So with regard to the CFA, the computer  
3 forensic analyst, he testified and summarized his position as  
4 he sees and extracts --

5 A Uh-huh.

6 Q -- and then analyzes the data. So with regard to a  
7 hacking situation like this, was there precious time lost with  
8 regard to trying to find out or extract information to find  
9 evidence of a hack?

10 A Yes. And it's, there was, and it's not -- it's just  
11 a matter of technology. It's just the way it changes.  
12 Runtime, runtime malware has changed and --

13 Q So runtime malware is --

14 A Runtime malware is, runtime malware is malware that  
15 runs real time in system ran. It has no files. There's no C,  
16 c:/exe to file. It just, it operates wholly in memory. And  
17 it --

18 Q So does it just, is it like a kill switch at some  
19 point, is that what that means?

20 A Yeah, essentially.

21 Q It just stops --

22 A There's, there's, there's no need for a kill switch  
23 built into the application because as soon as you turn off the  
24 power, it's gone. When something runs in RAM, RAM is volatile  
25 I mean in that, when it loses power, it loses all contents and,

1 which is why sometimes if you have a slow computer and you  
2 could check the RAM, it's all filled up with multiple browser  
3 windows. So I'll just restart. And you restart and you come  
4 back and now you, it's, it's sped up again because your RAM is  
5 clear because you don't have all these programs open.

6           And so, yes, I think some time was lost and I think  
7 potentially some chance to collect some evidence was lost  
8 because -- and this is all by design. Hackers are not stupid.  
9 They, they recognize when, when law enforcement and security  
10 professionals are catching up and they change the game. They,  
11 they change it slightly to stay one step ahead and it's always,  
12 it always has been and always will be one step ahead.

13           So if you're able to find and catch my malware  
14 through Malwarebytes or Norton Antivirus or Max Off Security  
15 Essentials, I'm going to change the malware and make it harder  
16 for you to catch it. The problem is, is, is when you collect  
17 evidence, and please correct me if any of this is wrong, Madam  
18 State, is that when you collect evidence, there's a search and  
19 seizure warrant from what I understand. You go there and you  
20 collect the evidence and you bring it back. And then you take  
21 the hard drive, whatever devices you have, and you create a  
22 mirror image and you create a mirror image. And this mirror  
23 image is, it's called caching, and, and you cache this mirror  
24 image, no, not caching, I'm sorry, hashing and you create a  
25 hash. And let me explain briefly what a hash is. A hash is,

1 you can take any amount of data, whatever size it is, and --

2 Q Let's, let's just call it child porn.

3 A Okay. Let's take that. Okay. So, for instance,  
4 child porn, okay, you have these images. One may be 750  
5 kilobytes for a JPEG image, photo image. One may be 1.5  
6 megabytes. One may be a higher resolution at 10 megabytes.  
7 When you hash that through a hasher algorithm, say shaw one,  
8 shaw two, secure hash algorithm 1 or secure hash algorithm 2,  
9 the output chunk will always be identical, the same block size,  
10 but completely different.

11 So if this photo, photo A, never changes, no one ever  
12 makes any edits, I can hash that a thousand times and get the  
13 same hash value every single time. The same with photo B will  
14 have its own hash value. Now if someone changes just one pixel  
15 on photo B and hashes it, you'll have a different hash value.

16 So what a forensic analyst does is he takes the hard  
17 drive and he hashes it. And once he's got a hash copy, he  
18 checks the hash, makes sure it matches and then he leaves the  
19 original because he's got chain of custody to maintain and he  
20 works on the hash copy. And then he can do all of his analysis  
21 on this because something may change. Just by looking at the  
22 data, something may change. You, something may get moved  
23 around or fragmented blocks may be moved and so he works on  
24 that.

25 And so, yeah, I mean so if you, if you go to get

1 information from a computer and if you're looking for a photo,  
2 the photo is going to be there. You can just unplug it. But  
3 if you're going to look for malware or the potential for  
4 malware, you can't remove the power. You have to and, and, but  
5 what that causes, there's a, it could be a significant amount  
6 of time that law enforcement or the analyst would have to be  
7 onsite at the point of evidence collection. So how do you  
8 reconcile that?

9 Q So in this, in this particular case with regard to  
10 the Acer laptop, they concluded that there were no threats of  
11 Malwarebytes. It's a micro, Microsoft Security Essentials, no  
12 threats found.

13 A Uh-huh.

14 Q What exactly does that mean, that he was not hacked?  
15 That there were no --

16 A No, Malwarebytes is, I think right now this, I think  
17 at the moment they're on Version 3 dot something. I'm not  
18 very, I'm not, haven't played with 3.X much. I, I'm overly  
19 familiar with 2.X. That was only 60 percent, it was only 60  
20 percent good. It would only catch 60 percent of the malware.  
21 That's not very good, especially not when the new  
22 (unintelligible) is coming out, it says 70 percent of malware  
23 is runtime and so it's, so, yeah, I mean it's a constant,  
24 that's why programs are constantly evolving trying to catch up  
25 because just because you run clean, it doesn't necessarily mean

1 you're clean.

2           And Microsoft Security Essentials is good enough to  
3 start with. Microsoft didn't have anything. There were lots  
4 of commercial programs selling their products. Microsoft  
5 bought a company called Giant Software which is typically what  
6 they do. Google has that same model. They bought Waves. You  
7 let the market develop the application instead of you putting  
8 research dollars and when it works, you go buy it.

9           Microsoft bought, Microsoft, and they bought Giant.  
10 So you have Microsoft Security Essentials, anti-virus Malware  
11 Windows Defender. It's okay. It's not great, but it's, it's  
12 something. It's better than nothing, but it's just okay.  
13 Malwarebytes is better than that and it's typically one of the  
14 best ones, but even it, it's not, it's not 100 percent  
15 reliable.

16           Q     So if, if Abe bought this premium Malwarebytes and  
17 cleaned his Acer laptop because there were over 200 unwanted  
18 programs, and then later on there was analysis done to try to  
19 find evidence of a hack, evidence of malware, and the result is  
20 on that Acer laptop nothing exists, it's totally clean?

21           A     I would have, if I ran the Malwarebytes and it came  
22 back with 200 something, I wouldn't even quarantine, I would  
23 just hit delete and they would be gone. Then I'd run it again  
24 and it would just be clean. Why, because I just deleted them.  
25 I don't want them hanging around. They, they encrypt them and

1 they can put them in files, but if you have something  
2 encrypted, there's a decryption key. So if it runs it, it  
3 finds it and it wants to clean it/delete it, I just delete it.

4 Q So --

5 A Now --

6 Q -- what --

7 A Now the problem with malware is it's not so much that  
8 Malwarebytes is not doing its job. It is scanning for what it  
9 knows and scanning those signature files. It also scans on  
10 what's called heuristics. Heuristics are things that maybe I  
11 don't know exactly what you are, but I'll tell you what, you  
12 look like a duck, you got to be a duck, and that's heuristics.  
13 I don't know what you are, but if this is what you look like,  
14 I'm going to kind of put you in that category. And so it does  
15 that.

16 Now the way spammers, spammers do this and  
17 extortionists and hackers do this, is they go to a site similar  
18 to say Virus Total, which uses 40 different malware antivirus  
19 scanners and they say here's my new exploit. I know there's a  
20 vulnerability in Windows, here's my exploit. I'm going to send  
21 it up to Virus Total and see if there's a hit. If there's a  
22 hit, I need to change my code. And as soon as I get a clean  
23 one, then, okay, now I can launch it because I've just vetted  
24 that as clean with 40 different scanners.

25 Q So with this expert report, essentially when it says

1 that there are no threats found, it might not be accurate,  
2 correct?

3 A This is correct. It's, just because malware says,  
4 Malwarebytes says there's no threats found doesn't mean there's  
5 no threats found.

6 Q Okay. And in your experience with your 20 years of  
7 experience, you know that first-hand, that it could say --

8 A Oh, yeah.

9 Q -- absolutely no threats, no malware, no residual  
10 footprints of a hacker and that you know to be inaccurate?

11 A Once it gets down to more than I'm willing to look at  
12 and go through every single registry key on every single  
13 identified piece of malware, potential malware, I'm formatting  
14 the computer because it's not going to be accurate.

15 Q Okay.

16 A It's just not going to be accurate.

17 Q With regard to the router, there was some testimony  
18 with regard to a Detective Elrod where he did not take Abe's  
19 router. Is it true that once you unplug a router that you lose  
20 all data?

21 A No, of course not. Everyone has a router at home.  
22 You might not even know it, you may call it your wireless  
23 access point, but that's your router. Everyone loses power.  
24 When you lose power, you don't go back in and reset everything  
25 back in your router, no, your router has settings that are



1 there. And so, yeah, so routers have, there are several  
2 different stages of essentially memory in a router/a computer.  
3 You have the bios, which is, has a little battery that controls  
4 what's in it. That's, that just kicks the computer, that's the  
5 one that just wakes it up and says, hey, we're starting up, by  
6 the way you've got two hard drives and, you know, four gigs of  
7 RAM. After then, then you get into the firmware of the router  
8 which then loads and once it loads the firmware out of the non-  
9 volatile RAM, NV RAM, it's not subject to power, then it's  
10 running. Once it's running, it uses RAM to, to fluctuate  
11 applications coming in and out where the lode is from multiple  
12 computers, whether you're filtering firewall traffic, things  
13 like that.

14 And so when you lose power, anything that was in the  
15 RAM is lost. NV RAM, the non-volatile RAM, is not lost and  
16 essentially the bios is not lost. And so power comes back on  
17 and it boots back up in the reverse order, bios, NV RAM, RAM.

18 Q Okay. So with regard to this iPad that nobody can  
19 actually break into, is it absolutely true that you can't break  
20 into an iPad that you've just lost the password?

21 A FBI paid a, reportedly paid a third-party company  
22 about \$900,000 to break into the iPhone of the San Bernardino  
23 shooter. And they had to do that because they didn't have the  
24 San Bernardino shooter to get in there. Could you imagine if  
25 Apple sold a device, millions of iPads, that there was no way

1 to recover a password? This, you can either go -- you can hook  
2 it up to a computer that has iTunes, you sign in with the Apple  
3 account, sync it, you're in. You can go to your I Cloud, sign  
4 in, recover your password. I think there's, I think there's a  
5 third way where you can go sign into your Apple, Apple ID  
6 account and, and something about recover password. I think  
7 there's a good three ways where you can recover because if  
8 you've lost your password to your iPad, which multiple people  
9 lose passwords, we have so many passwords to remember, yeah,  
10 you can't legitimately sell that product, millions of them, and  
11 expect people to not be able to recover their password.

12 Q All right. So in this case, this iPad apparently  
13 wasn't synced with any of the other devices. Could law  
14 enforcement, the CFA, could he had taken this iPad in  
15 particular, hook it up to another Apple computer where it has  
16 icon, or iTunes, and then get into the iPad?

17 A He could, he could connect it to any, any computer,  
18 Apple or Windows that has iTunes, but he would need the Apple  
19 ID --

20 Q Uh-huh.

21 A -- user name and password for that account because  
22 once you log, once you associate your iTunes with that Apple  
23 ID, then you can sync your device to it and you can move your  
24 music back into that. And that's how when you get a new  
25 computer, you have your, you have your, going back a few years,

1 when you have your IPod or, or your iPad and you get a new  
2 computer and you keep your computer, you have your, all your  
3 music on your iPad, you install iTunes, you log in with your,  
4 with your account and you sync it and it takes a while and it  
5 copies it and it merges all your music back over.

6 Q Okay. So with regard to, so was, it was as simple as  
7 asking Mr. Mallik, hey, what's your iTunes or ID?

8 A Yes.

9 Q And with regard to the browser history and, and the  
10 three, and the, I'm sorry, the eight images that are involved  
11 in Count 1 through 8, if this computer was hacked, would there  
12 be a browser history that shows child porn images?

13 A Potentially, potentially not. It just depends on --  
14 it, if I'm the hacker, it depends on how, how I want to use  
15 that new computer and network that I now own. If I have images  
16 that I want to push on there and then share out, I'll just push  
17 them over and all of a sudden they just appear. There's no  
18 browser history. Or if I can wait until the wee hours of the  
19 morning, sign in, I know it's East Coast standard time, I can  
20 sign in, blank the screen, lock the keyboard and the mouse and  
21 now I can go out and browse and pull down.

22 And so, yeah, I mean there's two ways it could be  
23 done. If they didn't have full access, if they had access to  
24 be able to push, then typically they would push. But if they  
25 didn't have access or were trying to find images that they did

1 not have, they would browse to go get them.

2 Q Okay. So, so if they are old images, if these  
3 hackers had old images of child pornography, I guess they don't  
4 need to put it in a browser of Mr. Mallik's device to look it  
5 up? They could just --

6 A No, from --

7 Q -- have it --

8 MS. KING: Objection, Your Honor, to counsel's  
9 testifying. Can you ask a question?

10 THE COURT: Sustained.

11 MS. CHOI: Okay.

12 BY MS. CHOI:

13 Q So with regard to that browser history, actually --  
14 (Discussion off the record.)

15 BY MS. CHOI:

16 Q With regard to the scans that CFA gives and  
17 conducted, and it looks like that the scans were done on three  
18 different computers.

19 MS. CHOI: If I may approach the witness?

20 THE COURT: Yes.

21 BY MS. CHOI:

22 Q Now for Abe's computer, which is a PC3, identified  
23 here, they did a scan of that computer. What exactly does this  
24 result mean?

25 A This is a scan using Microsoft Security Essentials,

1 the default comes with every Windows PC. It's, it's okay.  
2 It's not great. If it was great, no one would be buying  
3 Symantec, Norton, McAfee or Malwarebytes. So the scan  
4 completed its scan, 645, roughly 645,000 items. It shows that  
5 it has real time protection, so it's looking for malware coming  
6 in. It says it's up-to-date on its definitions and it was  
7 scanned at 5:10, so May 10th at 3:30 p.m.

8 Q And does that mean that there was no hacking  
9 involved?

10 A It was just a quick, quick scan. Well, no, the last  
11 scan, no, this one -- this one looks to be a full, full scan.  
12 No, so it, it shows me that it was scanned with Microsoft  
13 Security Essentials. It shows me that, that the software says  
14 it's clean, but it doesn't, it doesn't prove to me that it's  
15 clean.

16 Q It doesn't prove to you that it's clean?

17 A No, it doesn't prove that it's clean.

18 Q Okay. Based on the testimony and information that  
19 you've been privy to, is it possible, if not reasonable, to  
20 conclude based on Mr. Mallik's behaviors of making phone calls,  
21 rebooting, all of those things that you've heard, is it a  
22 reasonable conclusion based on your experience --

23 MS. KING: Your Honor, this is a leading question. I  
24 think counsel is just trying to ask what his opinion is.

25 BY MS. CHOI:

1           Q     What is your opinion?

2           A     That it's highly likely that, yes, the Asus router  
3 was hacked. It's involved in FTC lawsuit that they settled,  
4 \$200 plus million lawsuit. I don't have exact numbers of how  
5 many customers were affected, but last I read it was several  
6 thousand that were reportedly hacked.

7                     This is not fun hacking. You know, people really  
8 hack routers for a purpose. You know, someone doing fun  
9 hacking is they're hacking a Wi-Fi network. They are, look, I  
10 hacked somebody's Wi-Fi, I can get free, free Internet. No,  
11 this is, you can, this is hacking with a purpose. These  
12 images, these images are not new. I haven't seen the images, I  
13 really don't care to see the images, but these images are not,  
14 are not new. If they've been hashed, they're not new, and  
15 Google scans, Google scans every e-mail. They don't scan your  
16 texts. They don't know, they don't care what you send in a  
17 text, but they scan. They look for hash and they say, they  
18 say, see an attachment, they look for a hash match and if the  
19 hash value matches something that's on the CP list, the child  
20 pornography list, then it's flagged. And so, yeah, it's, it's  
21 highly probable in my opinion that, yes, this computer was  
22 hacked.

23                     MS. CHOI: Your Honor, if I may approach the witness?

24                     BY MS. CHOI:

25           Q     Mr. Johnson, I'm showing you what's been marked as

1 Defendant's Exhibit 23. Can you take a look at that? Do you  
2 recognize that document?

3 A Yes.

4 Q And what is it?

5 A This is a report that I wrote.

6 Q Okay. And is this the exact same copy of the report  
7 that you provided to us?

8 A Yes, it is.

9 MS. KING: The State stipulates.

10 MS. CHOI: Okay.

11 BY MS. CHOI:

12 Q And is there a correction with regard to the, the  
13 unwanted, is there any corrections to be made with regard to  
14 any of your unwanted programs?

15 A The, the report I wrote with the information I had at  
16 the time --

17 Q Okay.

18 A -- given new information from the last week's scans,  
19 I would, I would have to go back through, but, yeah, there's  
20 always -- as you get new information, you update the report  
21 based on new information given to --

22 Q Okay.

23 A -- to maybe come to some new conclusions.

24 Q All right. So at the time that you wrote this  
25 report, you had some information about the police report?

1           A     That's correct.

2           Q     And so the information that you now are up-to-date  
3 with --

4           A     Yes.

5           Q     -- is that your conclusion is that Mr. Mallik was  
6 hacked?

7           A     Yes, there wouldn't be any substantial changes to the  
8 conclusion in the report.

9           Q     Okay.

10           MS. CHOI: And I'll just leave that for the jury to  
11 look at later. If I would --

12           THE COURT: Defendant's --

13           MS. CHOI: Your Honor --

14           THE COURT: -- 23 is --

15           MS. CHOI: -- if I may move to --

16           THE COURT: -- admitted.

17           MS. CHOI: -- admit the evidence, I would like to  
18 move that into admission.

19           THE COURT: It is admitted.

20                               (The document marked for  
21 identification as Defendant's  
22 Exhibit No. 23 was received in  
23 evidence.)

24           MS. CHOI: One final question. Actually, no, I'm  
25 done. Thank you very much. No further questions.



1 THE COURT: Cross.

2 MS. KING: Your Honor, at this time I believe that,  
3 may we, we need to recess after all that information. If we  
4 could request maybe a 15 minute recess?

5 THE COURT: I'm trying to get this trial done.  
6 Ladies and gentlemen, do you need a break? You're all right?

7 MS. KING: Okay. I'll continue. I just didn't -- I  
8 knew that was a lot to, to sit through.

9 CROSS-EXAMINATION

10 BY MS. KING:

11 Q Good afternoon, Mr. Johnson, how are you?

12 A Good afternoon.

13 Q So you just gave a lot of information in very general  
14 terms, okay? So I'm just going to, we're going to bring you to  
15 the specifics if you don't mind. Just to cover the bases,  
16 though. So you are the defendant's neighbor?

17 A Yes, I am.

18 Q All right. How long have you been neighbors?

19 A I've lived there for nine years and I believe maybe  
20 eight --

21 Q Okay.

22 A -- I believe, eight years as neighbors.

23 Q And you said, you stated that you actually interact  
24 while doing the lawn and kind of interact, you guys have had  
25 conversations directly the last eight years?

1           A     Yeah, we're, we are neighbor, neighbor friends, so --

2           Q     Okay.

3           A     -- we have, I've never been to Abe's house. Abe has  
4 never been into my house. I see him --

5           Q     Okay. I just wanted to know if you were, you were  
6 friendly?

7           A     So that's where we --

8           Q     Okay.

9           A     -- we see, we chat cutting the grass, so, yes.

10          Q     And so he approached you regarding this case, is that  
11 correct?

12          A     This is correct.

13          Q     Okay. And that's how you became involved, you stated  
14 when you were, when Ms. Choi asked you, that's how you, you  
15 become involved as he, he approached you and then you  
16 volunteered, correct?

17          A     Yes.

18          Q     So it's not what you stated in the report, which is  
19 that Ms. Choi contacted you out of the blue, it's, it's first  
20 you, he, the defendant contacted you first before Ms. Choi?

21          A     Yeah, I believe I spoke with Abe about it and then at  
22 some point Ms. Choi contacted me thereafter.

23          Q     Do you recall when he contacted you? You said you  
24 don't remember, but it's, it was very important with the  
25 timeline. Was it, was it last year? We know that -- was it,

1 was it a month ago? Was it right after the incident? You  
2 don't recall?

3 A No, it was, we had some conversations, I think  
4 there's two things. I think we, we had some initial  
5 conversations, not even about the case, but about his router  
6 and maybe last, I know it was early spring.

7 Q Okay.

8 A Still winter, January, February, early March, like  
9 somewhere in that timeframe. It was just a passing  
10 conversation. We were both out in the yard talking about he's  
11 been having some problems with his router, what would I  
12 recommend, things like that.

13 Q Okay.

14 A And then I think it was with regards to the case  
15 specific --

16 Q Was it after the search warrant, April 21, 2016,  
17 that's when he --

18 A It was, it was after that timeframe because I know  
19 he, he said something about, you know, he wanted me to, there  
20 was some legal trouble that he was looking for some help with.

21 Q And how many conversations have you had with the  
22 defendant and Ms. Choi regarding this case approximately, and  
23 conversations meaning meetings, e-mails?

24 A I sent reports and I've received -- I've sent the  
25 report and I've received updated information and sent some

1 analysis on that report and I think that's it.

2 Q And you stated that you based your report, just so  
3 I'm clear, on what the defendant told you happened, right?

4 A The only information I was given at the time I wrote  
5 the report. So at the time I wrote the report, I had some, I  
6 think I had the first initial report for -- I had the police  
7 report and I had, and I think at that time I had the  
8 information from the service provider.

9 Q So just statements, statements basically, correct?

10 A Not statements as in oral, oral statements or --

11 Q Not oral statements, written statements.

12 A Yes.

13 Q Okay.

14 A Documents.

15 Q So you didn't do an independent analysis of any of  
16 the devices?

17 A No.

18 Q Okay. You never met with the forensic examiner, Mr.  
19 Gibson, to review the actual file that contained the child  
20 pornography?

21 A No.

22 Q Okay. You never examined the e-mail and box file  
23 that we received from Google, correct?

24 A Correct, this is correct. I did not.

25 Q You never examined the file, physically examined the

1 file structures or any of the data related to child pornography  
2 because you couldn't receive that in paperwork, correct?

3 A I would not -- correct. I could not receive it, but  
4 and, no, I did not examine it.

5 Q Okay. So your conclusions is, are, it's based on the  
6 physical written statements of the, or the defendant, what the  
7 defendant told you and documents that were provided to you,  
8 right?

9 A Yes, statements from --

10 Q Okay.

11 A -- the defendant and documents that were provided to  
12 me from the prosecution.

13 Q So let's talk a little bit about your expertise  
14 because you talked about a wide range of things and very  
15 impressive, but I just want to be very focused on, on, on  
16 actually what you do for work, okay? I know you may have a lot  
17 of extrinsic information, but let's talk about, I'm going to  
18 kind of just go through your, your resume here. So my  
19 understanding is that you do cyber security assessment and you  
20 create some software, hardware based on, to respond, you know,  
21 to, in response to your assessment, is that right?

22 A I create, not necessarily create software and  
23 hardware in response to assessment.

24 Q You implement it?

25 A Yes.

1 Q Okay.

2 A Yes.

3 Q You, and so I'm just going to walk through some of  
4 the, some of the places that you've worked like New York City,  
5 Build it Back in Brooklyn and city of Houston, metro Boston.  
6 In all these instances, you're doing an assessment of their  
7 current security state, right?

8 A In, a little bit different in each, each one. So in,  
9 in Houston, they were looking to build out their cyber  
10 disruption team. They were looking to say how can we respond  
11 to a cyber-incident quickly? So we helped them build a cyber-  
12 disruption team.

13 Q Okay.

14 A So we did an analysis of what they had and helped  
15 them build out.

16 Q So a lot of these places are contacting you for  
17 preventative measures, correct?

18 A Houston and Boston, correct. New York --

19 Q Okay.

20 A -- no. New York was a disaster response action that  
21 was zero infrastructure on the ground.

22 Q What, so that was a disaster, not a, there wasn't a  
23 hacker and then they contacted you? People contact you to  
24 protect their information, right?

25 A This is correct.

1           Q     And how do you do an assessment? How do you analyze  
2 a network?

3           A     So you start off, for instance, this is -- I'll speak  
4 specifically to Boston and the 12 surrounding, I believe it's  
5 12 surrounding townships. City of Boston is small, but they  
6 have the most money. And when this job came down through, you  
7 go back and you say, okay, I need your, for each township  
8 Winthrop, Revere, Quincy, Mass, Boston, I need to know your  
9 most critical piece of your network. What's your most critical  
10 infrastructure, your critical network? They identified that.  
11 Most time it's the police --

12          Q     So do you go --

13          A     -- safety network?

14          Q     -- you go in there and take a look at the network?

15          A     So, so, yeah, I, so I go onsite and I spent on and  
16 off a few weeks and I sit down with the chief information  
17 officer, network engineer, network administrator, help desk and  
18 I do a physical look and I ask them --

19          Q     Uh-huh.

20          A     -- maybe -- it's a hands-off assessment. I don't  
21 touch any hardware, but I do look around and I asked them maybe  
22 four to 500 questions and then from those I determine whether  
23 there's a high risk and a high probability and what, and also  
24 potentially, if we can get to it, what that would cost them.

25          Q     And then so when you are doing these assessments, you

1 said you'd do both like a physical examination and, and I would  
2 assume when you're trying to implement security tool, you have  
3 to do an actually hard analysis of the hardware or --

4 A When it's a, when I mean a physical examination  
5 meaning I'm, I'm physically onsite and I ask them to show me  
6 the server room or the network closet where all the switches  
7 are, but I'm not physically touching their equipment. There's  
8 no hands-on. What I'm looking for is to see --

9 Q So do you work at all hands-on with hardware in your  
10 professional capacity as a cyber-security assessor?

11 A In the last, as a cyber-security assessor, in the  
12 last, since, other than, the last time really was, yeah, yeah,  
13 I was just going to say --

14 Q Okay.

15 A -- exchange but, yeah, yeah, absolutely. There's a,  
16 there's an ongoing project overseas in the Middle East --

17 Q Okay.

18 A -- that I just left, that I designed and developed  
19 the hardware for that.

20 Q So you really have not, not a lot of experience in  
21 actually examining hardware?

22 A Examining hardware for?

23 Q For cyber-security purposes, you just stated that you  
24 do a physical assessment of, of structure, but you don't  
25 actually examine the hardware in these networks?



1           A     If I was --

2           Q     Is that, is that, is that correct?

3           A     Examining hardware for an existing network is not  
4 really a cyber, it's not really a cyber-security assessment.  
5 You're --

6           Q     Okay.

7           A     From a, from a physical infrastructure standpoint,  
8 the security assessment is is that door locked? Do you have  
9 access control? Is there cooling inside the room? Is water  
10 going to drip on this equipment? That's a physical assessment.  
11 The actual say, an actual cyber-security assessment or analysis  
12 of the equipment would be more of a --

13          Q     A forensic person?

14          A     -- a CFA.

15          Q     Right. So all that testimony regarding digital  
16 footprints and traces, you don't have any direct experience  
17 looking for that stuff, do you?

18          A     No, I, I, I --

19          Q     Okay. That's, that's what I --

20          A     No.

21          Q     -- just wanted --

22          A     I don't look for the footprints. My, I interpret how  
23 the footprints got there.

24          Q     Okay. And then prior to, so, and prior to doing  
25 these security assessments, the second page you are doing, IT

1 network manager for various places and, and you stated that's,  
2 that's, you know, kind of like when we call the IT for any  
3 company that's, that's where you're working?

4 A So I was, I had those guys work for me. I had a team  
5 of anywhere between five and eight help desk techs that worked  
6 --

7 Q Okay.

8 A -- underneath me, and if you called them for support  
9 and then, yeah, one of my level one techs would assist you with  
10 your computer.

11 Q And the majority of these places are big  
12 corporations, right, are businesses, I'll just say they're all  
13 businesses?

14 A They're, they're big --

15 Q Okay.

16 A -- organizations. ACOM was 100,000. Thames and  
17 Moore was down to 1,500. But each individual office may be 500  
18 or, or less. The work, but when I was working with clients,  
19 Boston was obviously the city of Boston, surrounding townships  
20 and then housing recovery office in New York, that was  
21 essentially, you know, a five, five office location with 180  
22 staff. So it --

23 Q Okay.

24 A -- it varied in size.

25 Q And you stated that you had some experience regarding

1 child pornography, but that was just creating, creating  
2 profiles? You don't have any experience in examining forensics  
3 regarding child pornography?

4 A No, correct, just the --

5 Q You don't have any experience with the patterns of  
6 someone who possesses child pornography?

7 A Correct.

8 Q You don't have any experience with the labeling of  
9 child pornography files?

10 A Correct.

11 Q Okay. In your capacity as a cyber-security  
12 professional, there has never been any relation to child  
13 pornography in these business organizations?

14 A No.

15 Q Okay.

16 A No, not specifically child pornography, no.

17 Q So we talked a lot, a lot of technical terms. I mean  
18 in your report, you were, you refer to a lot of technical terms  
19 like key logger, remote access Trojan, and that's your theory,  
20 that that is what a hacker would have had to use, correct?

21 A Yeah, that's part of it, yeah.

22 Q Okay.

23 A Agreed.

24 Q And, again, you stated in your report that it was, it  
25 wouldn't, you have no experience with trying to find the

1 digital footprint or any remnants of a key logger or remote  
2 access Trojan in your capacity as a security, cyber-security  
3 assessor, do you?

4 A Not as an assessor now but, yeah, I have tracked down  
5 various pieces of malware because as a, as a network  
6 administrator, the cyber-security profession is still  
7 relatively new and as a standalone, but as a network  
8 administrator, you own everything inside the network. So  
9 whenever there's malware or viruses, I mean going back to  
10 years, so say the Melissa virus years ago, yeah, as a network  
11 administrator you have to try to track that down. You have to  
12 isolate that and you have to be able to try to figure out where  
13 it is.

14 Q Okay. And let's talk about the Asus router. Just  
15 because I have an Asus router doesn't mean that I've been  
16 hacked, does it?

17 A Just because you have an Asus router doesn't mean you  
18 have been hacked, but it --

19 Q Okay.

20 A -- and it doesn't necessarily --

21 Q And so you don't, so it's a yes or no question, okay?

22 A Correct.

23 Q Okay. Thank you. And you actually state in your  
24 report all routers, all, and you stated in your examination,  
25 all routers are what you would call in your field like a tier 3

1 vulnerability level, there's commercial, they're not very  
2 highly secured in their default setting, correct?

3 A Yes.

4 Q Okay. And you actually stated that if you own a  
5 device that connects to the Internet, this is a direct quote,  
6 that it can be exploited using vulnerabilities, right?

7 A Absolutely.

8 Q So everyone in here who has a phone that's connected  
9 --

10 A Yeah.

11 Q -- to Wi-Fi data --

12 A Absolutely.

13 Q -- we're all exposed to --

14 A Yes.

15 Q -- vulnerabilities? Thank you. And you also stated  
16 in your report, as well as in, in direct examination that FTC  
17 has actually filed other lawsuits, similar lawsuits, almost  
18 identical lawsuits in thing like D-Link, another type of  
19 router, right?

20 A Yes.

21 Q And you testified that you're familiar with the  
22 settlement and talked about the, the -- let's talk about the  
23 substance of, of that settlement and what, what the main issues  
24 were. So you are familiar that there were two main issues  
25 regarding the Asus vulnerability, right, that there was, I

1 believe it was actually in the article that counsel reported is  
2 that it says, quote, "One of the design flaws is that the same  
3 default log-in credentials on every router, user name, admin,  
4 password, admin, right? That's a poor business operation to  
5 allow people to keep it on a default setting, right?

6 A Correct.

7 Q You are aware that this defendant's router was  
8 password protected though, were you aware of that at the time  
9 you wrote your report?

10 A I was aware that it was password protected.

11 Q Okay. And the other main contention regarding that  
12 is actually in the title of this it says the Cloud service of  
13 the router, right, where people would have an option to use the  
14 router Cloud with plugging in your, your USB and savings things  
15 onto this Cloud, it was actually unsecured, right? That's,  
16 that's part of the issue? Did you know that there was no  
17 evidence that the defendant used that Cloud service, that that  
18 program was, there was no trace of that either?

19 A Yes.

20 Q Okay. So you were aware of that? You talked about  
21 how hacking takes a lot of time and effort, right? This is not  
22 something that I could, talked about how, in your report you  
23 talked about how it usually occurs in the middle of the night  
24 when nobody is really accessing the computer and that this  
25 tape, this is some people's life's work, right?

1           A     Is that a yes/no?

2           Q     Yes, yes or no.

3           A     Yes.

4           Q     Okay. Thank you. Would you agree that the more  
5 times a hacker accesses a computer, the more footprint or trace  
6 that they leave?

7           A     No.

8           Q     Okay. And so why would, so explain, how is that, how  
9 is that not consistent with what you're saying? Why, why, why  
10 would they need to be in the middle of the night if they can  
11 just access it all the time and not leave a trace?

12          A     There are some things you can do from a command line,  
13 say from a, a dos prompt for those of us old enough to  
14 remember. So there still are some things you can do from a dos  
15 prompt and there are some things where you want GUI. And if  
16 you're, if you're accessing the computer at 7 o'clock in the  
17 evening through a GUI and you're moving the screen around,  
18 someone might see you moving the screen around.

19          Q     Right.

20          A     And so if you access it in the middle of the night,  
21 you have less chance to be caught.

22          Q     Okay. That's exactly what I would, I wanted to hear.  
23 As to all this discussion regarding malware, you state in your  
24 report that part of the facts that you base this on was that  
25 915 instances where malware was found in the defendant's

1 laptop, is that right?

2 A I believe, yes.

3 Q But that actually was not the defendant's laptop,  
4 that was his mother-in-law's laptop, were you aware of that, or  
5 you, you just made aware of that now?

6 A I think it was, there was three scans, I believe.  
7 One was 915, I think another was 300 and something and there  
8 was another one with 200 and something. I believe it was 900 I  
9 thought was the defendant's laptop.

10 Q Okay. So the, you would now, would you correct  
11 yourself now having heard the testimony that, that was actually  
12 not his laptop, that was his mother-in-law's laptop?

13 A Yes, I, I would correct --

14 Q Okay.

15 A -- that in the report.

16 Q And that's because all the defendant's laptops had  
17 already been seized by that point? That was after the, the  
18 search warrant, correct?

19 A I'm sorry, I'm --

20 Q That was after the search warrant, that's why he, it  
21 couldn't be his laptop because the date of that scan, according  
22 to the defendant, was after the search warrant?

23 A Okay. I'm not sure.

24 Q The date of the scan --

25 MS. CHOI: I don't --



1 MS. KING: -- was the 29th of that 915 off his  
2 mother-in-law's laptop and that was after the search warrant.

3 THE WITNESS: Okay.

4 BY MS. KING:

5 Q And you were aware that there was no child  
6 pornography found on that, that laptop was not searched?

7 A I am aware that that laptop was not searched.

8 Q Okay. Now can you tell us all the reasons why your  
9 Internet might be slow? Lots I'm sure. Just sum it up, sum it  
10 up for us.

11 A You don't have your own Internet connection. You  
12 share your Internet connection. So if you sign with Comcast  
13 and you say I have a 100 megabit Internet connection or in this  
14 case you have a formative, 29 megabit connection, and you live  
15 in say our neighborhood, you come to the street and you connect  
16 and you come to the street and eventually you get to a  
17 concentrator and everybody goes to that point. And then from  
18 there you have a fiber line that goes out back to Comcast.  
19 Everybody shares that line. So Comcast does not run fiber to  
20 the home of every individual. You all share.

21 So at some points you maybe say it may be slower,  
22 depending on how much they space out the aggregate to different  
23 people. It may be slower because people are using all the  
24 bandwidth, but typically they size it so that there's enough  
25 room for everybody to do a lot of different things. That's on

1 the Comcast end.

2           Within your house, you could be downloading, not even  
3 downloading because downloading really, even if it's a large  
4 (unintelligible) it's bursty, it will use a lot of, a lot of  
5 bandwidth for a short period of time and it would drop. If  
6 you're streaming a movie, say Netflix, compression technology  
7 now is where Netflix is very low bandwidth, so you can watch  
8 Netflix and other people can be doing things.

9           You can also have things that run in the background  
10 that you're not aware of and they're using bandwidth. And so -  
11 -

12           Q     So there's lots of reasons why?

13           A     There's a number, I mean as, and there's more.  
14 There's a number of reasons why your Internet can be slow.

15           Q     So just because your Internet is slow doesn't mean  
16 that you were hacked, does it.

17           A     No, just because your Internet is slow, it does not  
18 necessarily mean you've been hacked.

19           Q     Okay. And we already established this, but just to  
20 be clear, not all malware is bad, correct?

21           A     Malware by definition is bad.

22           Q     Or I mean not all malware is, is malicious and is,  
23 is, I believe, not all malware means that you've been hacked,  
24 we can establish that? Just because you have malware doesn't  
25 mean that you've been hacked?

1           A     Just because you have malware doesn't mean that  
2 you've been hacked and malware put there, but if you have  
3 malware, it's a precursor.

4           Q     Okay. But just because you have it, I could have  
5 malware on this computer, it doesn't mean that someone is  
6 hacking with my computer right now?

7           A     It would not necessarily mean that someone is hacking  
8 --

9           Q     Okay.

10          A     -- into your computer right now. But if you have  
11 malware on your computer --

12          Q     And just because you have malware doesn't mean that  
13 someone is placing child pornography on your laptop, does it?

14          A     It does not necessarily mean that.

15          Q     Okay.

16          A     But it does raise the case, raise the stakes.

17          Q     Now you talked a lot about, in your report you  
18 describe the phases of hacking.

19          A     Uh-huh.

20          Q     Aren't there different modes of hacking, different  
21 levels of hackers, different sophistication of hackers?

22          A     Just like organized crime syndicates, there's,  
23 there's different, you have, you have essentially crime bosses,  
24 project managers. They have software reports. They have sign-  
25 in, different projects. It's a multi-billion dollar industry

1 at the highest levels, at the highest levels where there's  
2 (unintelligible). Smaller, it's everything, it's just like any  
3 other crime. You have petty theft, you have grand larceny, you  
4 know, someone, someone grabbing someone's purse and you have  
5 someone looking to break into, you know, Rockefeller. It's,  
6 there's all different levels of cyber-crime that are in the  
7 mix.

8 For a hacker, the way hacking started and the way  
9 hacking is defined in textbooks, there is a methodology to it  
10 and that, that's how when you learn hacking, that's how it's  
11 taught.

12 Q And how long -- you talked about your conclusion in  
13 your report. First, you list off several facts about what Mr.  
14 Mallik says or does, right, he discovered a slow Internet, he  
15 saw this unknown router, so your conclusion or it's based on  
16 those facts, right?

17 A My, my conclusion was those, those information came  
18 from comments and statements from talking with Mr. Mallik, so  
19 I, I included them in the --

20 Q Okay.

21 A -- conclusion.

22 Q And your final conclusion says it is my conclusion  
23 that the illegal images present and distributed from Mr.  
24 Mallik's computer were copied to his computer and distributed  
25 by a hacker hoping to establish long-term base of operations.

1 So that conclusion is based on the fact that he saw an unknown  
2 device, the fact that he had slow Internet, the fact that he  
3 had a Asus router, those are your three primary reasons why you  
4 concluded that?

5 A There is no source location for the files.

6 Q Let's talk about that. There's no source, but you  
7 didn't examine the iPad, did you?

8 A I do not have the iPad.

9 Q Okay. And you, you talk about source, but you have  
10 no experience as to the file-sharing of child pornography that  
11 these images, the ones, I'm talking about the ones on his  
12 laptop could have been downloaded off the Internet, couldn't  
13 they?

14 A I am familiar with file sharing period.

15 Q Okay.

16 A So if it's, you cannot go from an iPad over to a  
17 Windows machine without something --

18 Q No, I'm talking --

19 A -- that someone -- okay.

20 Q You are aware that the images on the e-mail are  
21 totally separate images than the images on his laptop, aren't  
22 you? They're not the same images, sir. You're aware of that?

23 A Yes, there are multiple --

24 Q So --

25 A -- we're talking --

1 Q -- we're talking two --

2 A -- 11 images?

3 Q -- separate things, the images with the, there were,  
4 I don't know if you were aware because you didn't examine it,  
5 there was over 200 images of children, child erotica --

6 A Uh-huh.

7 Q -- and child pornography located on the Acer laptop -  
8 -

9 Q -- correct?

10 MS. CHOI: Objection, Your Honor. I think that's a  
11 mischaracterization. If she can clarify with regard to the  
12 number of child pornography versus the rest of them --

13 MS. KING: I'm just saying all these images in total  
14 were all located on that, on the laptop, correct?

15 THE WITNESS: I did --

16 MS. CHOI: The correction is, Your Honor, that there  
17 were three images of child pornography --

18 MS. KING: Right, three images --

19 MS. CHOI: -- and then the rest.

20 MS. KING: -- and then 200 child erotic children in  
21 different, various stages of clothing saved in very meticulous  
22 file, manually created file folders, right, you are aware of  
23 that fact?

24 THE WITNESS: I am aware of that.

25 BY MS. KING:

1           Q     Those images, you're telling me, could not have been  
2 downloaded off the Internet?

3           A     They could have been downloaded off the Internet, but  
4 in looking at the CFA's report, there was no browser history.

5           Q     And someone could clear their browser history,  
6 correct?

7           A     You can clear the browser history, but if you clear  
8 the browser history at the same time you typically clear your  
9 thumb cache.

10          Q     Okay. And you stated also that -- we talked about  
11 IP, we talked about IP addresses and Hide My Ass. You don't  
12 know if the defendant installed that onto any other device, do  
13 you?

14          A     I don't know.

15          Q     No?

16          A     I don't know --

17          Q     Okay.

18          A     -- if I've read that in the report or not.

19          Q     And you were aware that the defendant just purchased  
20 this laptop on March 21st?

21          A     Yes, I'm aware that the laptop --

22          Q     So the --

23          A     -- is new.

24          Q     So someone hacked his, that computer after March  
25 21st?

1           A       I'm aware that the laptop was new, yes.

2           Q       Okay. But at the same time you're saying that this,  
3 you stated that hacking, or it was one of your conclusions that  
4 this was, this happened years ago, this could have happened  
5 years ago, 2014, you stated, I think you started, you said that  
6 back in 2014 it could have been compromised?

7           A       Yeah, the router could have been compromised back in  
8 2014 or 2015, it just depends on at what point someone realized  
9 that they had a zero day vulnerable router on their hands.

10          Q       So we established the facts that you're basing your  
11 opinion on. Would you agree that if those facts are  
12 inaccurate, that would change your opinion?

13          A       Facts are facts, so --

14          Q       Well, I'm just --

15          A       No, I agree. Facts are facts. And so if facts are  
16 facts and there is a fact that my report is inaccurate, and it  
17 needs a revision and a new conclusion, then that's what would  
18 happen.

19          Q       So if there was no unknown device, that would change  
20 your, your opinion?

21          A       If there was no unknown device, that could, I'd have  
22 to read through the rest of the report or the rest of the data,  
23 but I could potentially change an opinion, yes.

24                 MS. KING: Okay. If, you know, I'll, no further  
25 questions.



## REDIRECT EXAMINATION

BY MS. CHOI:

Q Mr. Johnson, based on all of the cross-examination questions and the fact that there are eight images for Counts 1 through 8 with no source from where they originated from, as well as three images that were found on the Acer laptop with 200 unwanted programs within days after Mr. Mallik purchased it, does any of the State's expert report, these scans of having no evidence of malware, these little thumb caches, these little, mini images that are still on the Acer laptop, with regard to everything that you heard, does it change the ultimate conclusion based on your experience what you've done to interview Mr. Mallik, the information you, you received from me through the State's discovery, does it change your opinion that this particular situation --

MS. KING: Your Honor, this, this counsel is testifying. Is there a question?

MS. CHOI: Does it change your --

THE COURT: No, I think, I --

MS. CHOI: -- conclusion?

THE COURT: Overruled.

BY MS. CHOI:

Q Does it change your conclusion in any way?

A No.

MS. CHOI: Nothing further.

1 MS. KING: Nothing further.

2 THE COURT: All right.

3 MS. CHOI: The State, the Defense has no more  
4 witnesses, Your Honor.

5 THE COURT: Defense rests?

6 MS. CHOI: Yes, Your Honor.

7 THE COURT: Any rebuttal?

8 MS. KING: Yes, Your Honor. The State calls Michael  
9 Dickson.

10 THE COURT: Thank you, sir.

11 THE WITNESS: Thank you.

12 (Witness excused.)

13 MICHAEL DICKSON

14 called as a witness on behalf of the State, having been first  
15 duly sworn, was examined and testified as follows:

16 THE WITNESS: Thank you.

17 REBUTTAL DIRECT EXAMINATION

18 BY MS. KING:

19 Q Good afternoon, Mr. Dickson.

20 A Good afternoon.

21 Q Can you please state your full name for the record  
22 and spell it for, for the Court?

23 A Michael Edward Dickson, M-I-C-H-A --

24 Q You can spell your last name.

25 A Oh, sorry, D-I-C-K-S-O-N.

1 THE COURT: Thank you.

2 BY MS. KING:

3 Q And where do you work?

4 A I'm currently assigned as a Special Agent for the  
5 United States Secret Service at our Baltimore field office.

6 Q And how long have you been with the Secret Service?

7 A Approximately 18 and a half years.

8 Q Where are you currently assigned?

9 A I'm current assigned to the Maryland Electronic  
10 Crimes Task Force as a network intrusion response officer.

11 Q What is the Maryland Electronic Crimes Task Force?

12 A Maryland Electronic Crimes Task Force is a coalition  
13 of both corporate, academia, law enforcement, as well as  
14 financial institutions that basically work together in regards  
15 to the ongoing cyber threats as far as network intrusions,  
16 business e-mail compromises and other various forms of cyber-  
17 crime here in Maryland.

18 Q What did you do before the Maryland Crimes Task  
19 Force?

20 A I was assigned for three and a half years as  
21 assistant attaché in the U.S. Embassy in Sophia, Bulgaria.

22 Q And what did you, what was the nature of your duties  
23 there?

24 A Primarily I was assigned for investigative liaison,  
25 so we have no police powers when we're assigned overseas,

1 however, we're more or less there as an investigative nexus  
2 between our field officers here in the United States and our  
3 foreign law enforcement counterparts. Now one of the kind of  
4 unique things about the officer there is we were not just  
5 specifically assigned to Bulgaria, we were more of a regional  
6 office. So on top of conducting investigations in Bulgaria, we  
7 also did investigations in Bosnia-Herzegovina, Greece, Cyprus,  
8 Macedonia, as well as the caucuses in Armenia, Azerbaijan and  
9 Republic of Georgia.

10 Q Can you describe the nature of the cyber and  
11 electronic crimes that you were investigating there?

12 A Well --

13 Q If you can.

14 A Absolutely. A number of those countries we kind of  
15 consider ground zero for the emerging cyber threat that we seek  
16 today. Primarily, a lot of the threat actors that we have that  
17 are constantly targeting the financial institutions here in the  
18 United States actually live and act abroad. And so through the  
19 investigative resources that we had here in the United States,  
20 once they started identifying either IP addresses or wire  
21 transfers or the money or the data that was being sent back  
22 overseas, once they started developing suspects, it then became  
23 our responsibility to coordinate with those local law  
24 enforcement officers because they're the ones that have the  
25 police power and helped to identify and locate those

1 individuals, eventually arrest them and then hopefully  
2 extradite them back to the United States to serve time.

3 Q And what did you do before that assignment?

4 A Prior to that, I was assigned as an instructor at our  
5 Secret Service Academy, the James J. Ralby Training Center in  
6 Beltsville, Maryland. I was assigned as a counter-surveillance  
7 and counter-intelligence instructor.

8 Q And what did you do before that?

9 A Prior to that, I was on the President's protective  
10 detail for former President George W. Bush and former President  
11 Obama.

12 Q And how about before that?

13 A I was assigned to the Los Angeles field office for  
14 four and a half years.

15 Q And can you describe the counterfeit investigations  
16 you conducted there?

17 A So my time there was primarily assigned to the  
18 counterfeit currency section where we were tasked with the  
19 investigation and suppression of the large amount of  
20 counterfeit currency that was flowing through the Los Angeles  
21 area. So we had a lot of transnational mainly from South  
22 America, as well as the Pacific Rim countries, counterfeit  
23 currency that would be flowing into the United States through  
24 the ports of Los Angeles.

25 Q So in addition to the 18 years that you've had

1 experience in the field in cyber-security and electronic  
2 crimes, can you describe some of your specialized training for  
3 the ladies and gentlemen of the jury?

4       A     Yes, ma'am. So, well, starting from present to going  
5 backwards, recently we have, I went through the network  
6 intrusion response officer's course, which is a 3-week course  
7 that's offered through our academy. And its primary goal is to  
8 train agents in order to identify whether or not a network  
9 intrusion has actually occurred in a system network. Right now  
10 in the United States we've seen an uptick in what we call  
11 network intrusions where people are, or I should say threat  
12 actors are installing malware through a variety of different  
13 ways into people's home computers, businesses, corporations, as  
14 well as large corporate and academia networks.

15             And so one of our primary goals is to respond to  
16 these locations, identify the networks, try to identify where  
17 the point of compromise is and then to inspect the system and  
18 actually see if any present malware is active on that source.  
19 Prior to that, I was also, went through training for a counter-  
20 surveillance, counter-intelligence, which basically dealt with  
21 vulnerability assessments of our protected venues. So whenever  
22 the President or Vice President would be visiting a location,  
23 you also, you have the, obviously the, the guys in the  
24 sunglasses and the earpieces standing right next to him, but we  
25 also incorporate a much larger security bubble around him, so

1 that's one of the things that we also were assigned to do is to  
2 look at things from an attacker's viewpoint on how would we  
3 breach our security whether it's jumping a fence, driving a  
4 care through, aerial platform, that, that sort of thing.

5 Q And can you tell the jury how many cases you perform  
6 forensic examinations in over the course of your career related  
7 to cyber, related specifically to the cyber-crimes?

8 A Approximately --

9 Q Regarding NITRO, I'm sorry, your NITRO  
10 investigations.

11 A NITRO? Primarily 35 to 40. I also have 15 current  
12 cyber-related investigations.

13 Q And just so the jury is clear, NITRO is just  
14 shorthand for the Network --

15 A Yes.

16 Q -- Intrusion Response? Okay. And in addition to  
17 those over 50 types of investigations, as a part of your  
18 training, knowledge and experience, have you ever had, have you  
19 had to do controlled scenarios as well?

20 A I have. So when, part of our response, response  
21 platform, we go to a location. We utilize a number of either  
22 open source or agency-specific forensic tools in order to help  
23 us identify whether or not a system has been infected. And  
24 before we can actually use those in the field, we have to go  
25 through a training course to make sure that we're comfortable

1 in, in utilizing those in the field because, obviously,  
2 evidence can get lost if you push the wrong button.

3 So for each one of our, our agency-specific forensic  
4 tools, we go through a one-week course. So, for instance, just  
5 off the top of my head, you know, the volatility command line  
6 tool, which is a good online command line tool, we go through a  
7 one-week course in order to familiarize ourselves with some of  
8 the plug-ins and what exactly they do, how you implement it,  
9 what are some of the things to look for.

10 Q And in those controlled scenarios, were you 100  
11 percent accurate?

12 A Yes.

13 MS. KING: At this time, Your Honor, the State would  
14 like to move, move Mr. Dickson as a qualified expert in the  
15 field of electronic intrusion examination.

16 MS. CHOI: No objection.

17 THE COURT: I will accept the witness as an expert as  
18 tendered.

19 MS. KING: Thank you, Your Honor.

20 BY MS. KING:

21 Q As an expert in intrusion, I'm going to ask you one  
22 important question first, okay?

23 A Okay.

24 Q As an expert in intrusion, is there any way to  
25 determine if a network has been hacked without examining any



1 hardware?

2 A No.

3 Q I mean you could, can you explain that to the jury  
4 why not?

5 A It, I mean there's always a lot of theory and a lot  
6 of conjecture out there. There may be a lot of open source  
7 material that you can look at and you may theorize that, hey,  
8 this may have happened. But unless you actually -- and that's  
9 the reason why we respond locally to every, every site that is  
10 reported as being an intrusion because you simply cannot know  
11 unless you actually look at the system itself.

12 Q Okay. I'm going to direct your attention to this  
13 case specifically. Did you perform that forensic examination  
14 on the devices of, of Mr., of the defendant?

15 A I performed a, a forensic analysis on the three hard  
16 drive images that were provided to me, yes.

17 Q And is that the Acer laptop, the HP Notebook and the  
18 Dell laptop?

19 A Yes.

20 Q And can you explain the process of, of a forensic  
21 examination?

22 A Well, there's, there's a number of different levels  
23 of forensic examinations that we do. Ideally, to kind of go  
24 from beginning to end, when you show up to a location, the  
25 first thing you're going to do is actually talk to the

1 individual to find out what exactly is going on, what have they  
2 witnessed. From there, you're actually going to identify the  
3 network and then try to determine where the intrusion took  
4 place. And then from that point, then you'll start doing your,  
5 your image gathering, your collection of volatile data, network  
6 trafficking, process listing, some other things that probably  
7 don't make a whole lot of sense.

8 But one of the processes that we also do in regards  
9 to hard drive examinations, which is what happened in this  
10 case, is we look at what's called the Windows registry hives.  
11 And --

12 Q And what is that?

13 A The Windows registry hives is, I kind of equate it to  
14 more like the bibliography of your computer. So it's a, it's a  
15 wealth of information that basically tells, tells you what has  
16 happened within that computer, that specific laptop or desktop  
17 or notebook. And these hives are broken down into five  
18 different categories.

19 So you have, I think what was already mentioned, the,  
20 the SAM hive. You have the system hive. You have a software  
21 hive. You have a security hive and then you have what's called  
22 an NT.user hive. Now that's kind of a unique hive in and of  
23 itself because you've heard a lot of talk already about each  
24 laptop or work station will have a number of different user  
25 accounts. Well, for every user account that's within that

1 system, it's going to create a specific NT.user file for that  
2 particular user.

3 Q And did you perform a review of the hives related to  
4 these devices?

5 A I did.

6 Q And do you have those documents here in court with  
7 you today?

8 A I do.

9 MS. KING: If I may approach?

10 BY MS. KING:

11 Q And did you go through -- can you describe to the  
12 jury how you analyzed those hives?

13 A So for each, for each forensic image I had for each  
14 one of the three devices in question, I looked at the five  
15 different hives for each one. So, and really what it is is  
16 when you, when you copy a hive from the, from the hard drive  
17 image of a computer, the data that's coming to you is, in a  
18 better word, gobledygook, and I apologize for the stenographer,  
19 but it's, it's basically unparsed data that is unreadable. So  
20 we use an open tool called red dripper which then will parse  
21 the data and actually create, create the registry in a text  
22 document which makes it easier to analyze.

23 Now some of the, some of the hives are much larger  
24 than others. So, for instance, like the security hive is  
25 generally only like one page, one page document and it really

1 basically only tells you whether or not the auditing is enabled  
2 for that specific registry, which generally the default is it's  
3 not. And for some reason you see auditing is enabled, that's  
4 generally an indicator that something has occurred within that  
5 specific system. In this, this case, all the auditing was not  
6 enabled for each one of the devices.

7           From there we go to the SAM hive. And what the SAM  
8 hive does is it breaks down each one of the, the user accounts  
9 that's on that specific system. So it will actually give you a  
10 list of the administrator account and it will give you a list  
11 of the guest account and then it will give you a list, or  
12 actually show you the, like Michael Dickson account. So  
13 generally you'll see maybe like three to four different user  
14 accounts at any specific work station.

15           Now one of the reasons why this is kind of important,  
16 one of the things we'll look for is when a system has been  
17 intruded or been compromised, a lot of times the threat actors  
18 will either compromise the administrator account because that's  
19 the, that'd kind of the gold standard. Once you have those  
20 administrative rights, you pretty much have free reign over the  
21 system. You can change whatever you want.

22           Or they may just create a system-specific account,  
23 something that, like a second guest account or just something  
24 that they can be able to access the system because if they've  
25 embedded any kind of command and control malware, they need to

1 be able to get in there in order to ex-fill the information  
2 out. But the other unique thing is it also will list how many  
3 times a user has logged on. So if you see an exorbitant amount  
4 of administrator log-ons, that's probably a good indicator  
5 that, hey, someone has probably compromised the administrator  
6 account, because generally everybody, whenever you log on to  
7 your specific laptop, it's always under your, your user  
8 profile, so that one should always have the most user log-ons.  
9 But if you see an administrator log-on account and it's, has  
10 maybe the same amount of log-ons, then there may be something,  
11 something is askew.

12 Q So the --

13 A I'm sorry.

14 Q -- there are several, what are the other things that  
15 you look for?

16 A Under the software hive, which is, the software in  
17 the system hives are generally the largest and depending on how  
18 long you've had the computer, how much software you have on  
19 that computer, it can get very long and, and very lengthy. But  
20 primarily on the software hive, what we're looking for are  
21 legitimate software that's been installed within your system.  
22 And what we look for are legitimate like Microsoft-type  
23 software with legitimate file path.

24 One of the things about malware, in order to avoid  
25 detection, is that it will embed itself in a legitimate program

1 and then inject malicious code within a legitimate program and  
2 that's how it can evade a lot of like the malware scans or the  
3 anti-virus scans, because a lot of those are not developed in  
4 order to look for injected code.

5           The system one is actually a very important one  
6 because that one also shows us as far as what portable media  
7 has been, injects like USB devices, CD-ROMs, but it also will  
8 list IP connections. And so we'll look at those. If for some  
9 reason the system has had, we think has had some kind of  
10 network intrusion, it will actually list if there is any kind  
11 of foreign IP connection. And then when I say foreign, I don't  
12 necessarily mean like Romania or, or Russia, but it could just  
13 be an abnormal IP subsequent from like your normal at home  
14 Comcast or, or Verizon IP address that's assigned to that, to  
15 that system.

16           So if we find an abnormal or a foreign IP, that's a  
17 good indication, again, that we can look up that IP because  
18 another thing we see now is not necessarily malware that's  
19 injected via phishing or spear-phishing, but malware that's IP-  
20 specific that's injected via the IP address itself or IP  
21 addresses that are associated with specific kinds of malware.

22           And then going back to the individual, the NT.dat  
23 user hives, which are specific for those user accounts, we'll  
24 go through and look at those as well because that also tells us  
25 like what recent documents have been opened. What basically it

1 tells us, everything that that specific user has done on that  
2 system. So if you want to see what, how many guests have  
3 logged in and what they've done to your system, you would look  
4 at the, the guest hive. Or if you want to see if somebody,  
5 you've got an abnormal amount of administrator log-ons, well,  
6 hey, let's see what everybody has been doing under this  
7 administrative hive. What have they changed? What were the  
8 last right times? What documents have they opened? And what  
9 it does is it gives us the idea that, hey, if there's an  
10 abnormal activity in this account, then more than likely an  
11 intrusion has taken place.

12 Q And after analyzing all of that comprehensively, what  
13 were you able to conclude regarding these three devices?

14 A In evidence that I, I examined, I did not find any  
15 abnormalities or anything that would indicate that an intrusion  
16 had occurred.

17 Q And based in your expertise in intrusion and  
18 listening to the testimony of the last expert and all the, the  
19 testimony from the defendant, what else are you able to assist  
20 the jury in, in, in assessing that, in helping them to, to  
21 reach that conclusion?

22 A I'm sorry, what's that?

23 Q What other, after hearing all the testimony --

24 A Uh-huh.

25 Q -- from, for today, was there any other facts that

1 you found important that were, that were not consistent with  
2 your finding?

3 A Well, generally, for instance, I think there was an  
4 instance where I mentioned a key logger was possibly utilized  
5 in order to, to gather like the, the, the passwords or the  
6 administrator rights. And, generally, for instance, a lot of  
7 the key loggers we use will actually leave some kind of  
8 identification within the hives, that they've either been  
9 installed or they've been activated and we didn't, I didn't  
10 find anything in that regard.

11 Q And in your 18 years of experience in this field and  
12 the cases regarding cyber-security, have you always found some  
13 sort of trace and evidence of an intrusion?

14 A We have always found, or I have always found  
15 something. It may be something very small. As, as the  
16 previous gentleman said, these people are, you know, the threat  
17 actors become very, very sophisticated, so, but there's always  
18 at least something left behind that may indicate that something  
19 malicious was left within a computer, yes.

20 Q But you stated that there was nothing in this?

21 A Nothing that I examined, no.

22 MS. KING: No further questions.

23 THE COURT: Cross.

24 MS. CHOI: Yes, Your Honor.

25 CROSS-EXAMINATION



1 BY MS. CHOI:

2 Q Mr. Dickson --

3 A Yes, ma'am.

4 Q -- Mr. Dickson, let me, let me get less technical.

5 A Okay. Sounds good to me.

6 Q Kind of dumb it down a little bit for myself.

7 A Absolutely.

8 Q You said that the very first step in your analysis is  
9 to kind of gather some information from --

10 A Yes, ma'am.

11 Q -- the players involved.

12 A Yes, ma'am.

13 Q For this particular case, you never spoke to Mr. Abe  
14 Mallik with regard to what he experienced with his laptop,  
15 correct?

16 A Correct.

17 Q And I believe that the second step of your analysis  
18 is that you examined all of the devices that are involved or  
19 you gathered the devices, correct?

20 A Well, we identified the network, so --

21 Q Okay. Identified the network. Okay. Yes. You're  
22 right.

23 A So some are more complex than others. Some are very,  
24 like a home network is very simple, then you get into something  
25 like Johns Hopkins which you don't --

1           Q     And you deal with the more complicated. I'm thinking  
2 with your Secret Service background you deal with the more  
3 complicated networks?

4           A     Yes.

5           Q     Okay. And that's putting it very loosely, right?

6           A     We --

7           Q     You, do you deal with the most intricate,  
8 complicated, something that regular people don't understand  
9 type of networks?

10          A     Well, I would generally say we deal -- I personally  
11 deal with a wide variety. Now I would say out of the 35 to 50  
12 intrusions that I've gone to, I would say probably half, more  
13 than half would be on the intricate side that you're saying.

14          Q     Okay. So with regard to the network --

15          A     Uh-huh.

16          Q     -- that was involved in this particular case --

17          A     Uh-huh.

18          Q     -- did you at any time examine the Asus router that  
19 was involved?

20          A     No, ma'am.

21          Q     Would you agree that if the Asus router is unplugged,  
22 that you don't lose all the data?

23          A     You don't lose all the data, correct.

24          Q     Okay. So, Detective Elrod would have been incorrect  
25 when Mr. Mallik was trying to give him the Asus router, that

1 when he refused it, he said, you unplugged it, the data is  
2 gone, that would be incorrect?

3 A It would depend on what data he was looking for but,  
4 no, you, it --

5 Q That's incorrect?

6 A And I can't speak for Detective Elrod, so --

7 Q No, I'm not -- that statement is incorrect based on  
8 what you just testified?

9 A Yes.

10 Q Yes? I'm sorry, I didn't hear you.

11 A Yes, I'm sorry.

12 Q Okay. So that was incorrect?

13 A Correct.

14 Q You did testify that the malware can hide in  
15 legitimate programs?

16 A Yes, ma'am.

17 Q Okay. Did you hear Mr. Johnson's testimony when he  
18 said that the intruder was in the memory and not within a  
19 program?

20 A I did.

21 Q Okay. And with that, would you agree that the memory  
22 is deleted when the PC is shut off?

23 A The memory, the volatile data, the RAM data, when you  
24 turn a computer off is lost, correct, yes.

25 Q And, and there would be no trace?

1           A     There, no, there would be no trace.

2           Q     Okay. And you just testified with regard to this key  
3 logger, that it actually may have been used in these devices?

4           A     Well, no, I said that it is believed that a key  
5 logger was used based on the testimony of the defense, that it  
6 was, a key logger may possibly have been used.

7           Q     Okay. And you would agree that with regard to  
8 security breaches and hackers that the rules of the game  
9 consistently change, right?

10          A     Yes, but I do want to say when you talk about  
11 hackers, and because the word hack and hackers has become a  
12 very politicized term, so to speak, because I think it's one of  
13 these all-encompassing terms people like to use now --

14          Q     Uh-huh.

15          A     -- because it just makes it convenient.

16          Q     Uh-huh.

17          A     That's why we, we're not a hacker response officers,  
18 we're intrusions.

19          Q     Uh-huh.

20          A     And the way malware is designed today, it's more of a  
21 fire and forget. So it actually, people can install malware  
22 and not even have to, there doesn't have to be a person behind  
23 it. So your, not necessarily somebody is hacking, it's the  
24 malware.

25          Q     So if I'm understanding the process in which you're

1 coming to your conclusion --

2 A Uh-huh.

3 Q -- if you skipped steps one and two, and humanizing  
4 this case versus just --

5 A Uh-huh.

6 Q -- crunching number, which is, I think, what you do  
7 because it was over 1,600 pages of just numbers to me.

8 A Letters too.

9 Q Some letters, 1,600 pages. So when you skipped the  
10 first step --

11 A Uh-huh.

12 Q -- of talking to the individual where he's  
13 experiencing these things with the 200-plus unwanted programs  
14 and that is what he is telling the officer, and you skip an  
15 important step of actually examining an Asus router that still  
16 had data --

17 A Uh-huh.

18 Q -- doesn't, wouldn't it change your conclusion just a  
19 little bit? Is it possible to change your conclusion just a  
20 little bit based on skipping those two steps?

21 A Well, my conclusion is just based on what I examined.

22 Q Okay.

23 A My conclusion is not based on the totality.

24 Q It's not based --

25 A So based --

1 Q -- on totality?

2 A -- so my conclusion based on the evidence that I  
3 examined would still stand.

4 MS. CHOI: Okay. And I'll respect that. That's all  
5 that I have for this witness.

6 MS. KING: Very brief.

7 REDIRECT EXAMINATION

8 BY MS. KING:

9 Q You were present when the defendant testified,  
10 correct?

11 A Yes, ma'am.

12 Q Did anything that he said change your opinion  
13 regarding there being no, no intrusion?

14 A No.

15 MS. KING: No further questions.

16 THE COURT: Thank you, sir.

17 THE WITNESS: Thank you.

18 (Witness excused.)

19 THE COURT: I think we are at the end of the case.  
20 You're welcome to stay as long as you'd like, Mr. Dickson.

21 (Discussion off the record.)

22 THE COURT: All right. Let me see counsel at the  
23 bench please.

24 (Bench conference follows:)

25 THE COURT: Do you wish to renew your motion?

1 MS. CHOI: Yes, for the record.

2 THE COURT: All right. Again, I find that there's  
3 sufficient evidence to go to the fact finder. I'll deny the  
4 motion.

5 Now we've got instructions ready, right?

6 THE BAILIFF: They're right on your right hand.

7 THE COURT: All right. I'm going to give them about  
8 10 minutes.

9 MS. CHOI: Okay.

10 THE COURT: And I'm going to give them the, their  
11 instructions and we're going to do closing arguments.

12 MS. KING: Okay.

13 MS. CHOI: Okey-doke.

14 THE COURT: And I may give them a little time to  
15 deliberate unless they indicate they're ready to call it a day,  
16 but --

17 MS. CHOI: Yes.

18 THE COURT: -- I at least want to have it in a  
19 posture where --

20 MS. KING: And sworn, yeah.

21 MS. CHOI: Yes, yeah, sure.

22 THE COURT: -- another judge can come in and give  
23 them --

24 MS. KING: Yes.

25 THE COURT: -- instructions.

1 MS. CHOI: Absolutely.

2 MS. KING: Your Honor, would you mind doing it 15  
3 minutes? I need to break, a personal break?

4 THE COURT: Not the usual reason?

5 MS. KING: No.

6 THE COURT: All right, 15 minutes, that's fine.

7 MS. CHOI: I saw your face.

8 (Bench conference concluded.)

9 THE COURT: All right, ladies and gentlemen, we're  
10 going to take a 15 minute recess. After that recess, I'm going  
11 to instruct you as to the law and you will hear closing  
12 arguments.

13 Now anyone, well, is there anyone who can't stay for  
14 a while after you hear closing arguments?

15 JUROR: What's a while?

16 JUROR: Yeah, what's a while?

17 THE COURT: Well, I guess my plan is this, to let, to  
18 give you your instructions, let the attorneys make their  
19 closing arguments, and let you start to deliberate. I guess  
20 what I would probably do is once you begin those deliberations,  
21 I would check with you, give you a little while to deliberate,  
22 check with you and ask whether or not you're close to reaching  
23 a verdict. If you say no, then I would let you go for the  
24 evening, you'd come back tomorrow and since I won't be here, I  
25 would probably, I'd have another judge come in and take the



1 verdict, okay?

2           So we'll play it by ear, but I'm not going to, I'm  
3 not going to let you go for hours and hours and hours before I  
4 ask you whether you're close to reaching a verdict, okay? Now  
5 you've heard an awful lot of testimony here and, of course,  
6 we've had three experts testify in this case. A lot of the  
7 testimony, obviously, has been very technical, highly, highly  
8 complicated and involved testimony and I'm, I'm not saying I  
9 expect you to reach a verdict very, very quickly, but sometimes  
10 we're surprised. Sometimes it's quicker than we expect,  
11 sometimes it takes longer than we expect.

12           So and, again, one other thing is I don't know how  
13 long closing arguments are going to be. So we'll kind of play  
14 it by ear, but we'll take a 15 minute recess first. Thank you,  
15 ladies and gentlemen.

16           (Discussion off the record.)

17           (The jury left the courtroom.)

18           THE BAILIFF: All rise.

19           (Recess)

20           THE BAILIFF: All rise.

21           THE COURT: Be seated please.

22           (Discussion off the record.)

23           THE COURT: All right, counsel, let the record  
24 reflect that counsel and the defendant are present. Madam  
25 Clerk, are all the exhibits that have been marked in evidence?

1 THE CLERK: Yes. Not all of them have been marked.  
2 No, are you asking if we, if we have everything that's been  
3 marked?

4 THE COURT: Has it been introduced into evidence, are  
5 all the exhibits that have been marked in evidence?

6 THE CLERK: No, we have these, we have two State's  
7 exhibits and two defendant's exhibits that were not admitted.

8 THE COURT: All right. Which are the State's  
9 exhibits?

10 THE CLERK: State Exhibit 13 and State Exhibit 17.

11 THE COURT: 13 and 17, do you want those in, Ms.  
12 King?

13 MS. KING: I believe Your Honor -- could we, could we  
14 approach and look at it?

15 THE CLERK: Uh-huh. So 4 and 13 for yours were not  
16 admitted in the --

17 MS. KING: Right. Okay.

18 THE CLERK: 13 and 17 for yours were not admitted.

19 MS. KING: Yes, that's right.

20 THE CLERK: Okay.

21 MS. KING: Okay. So, yeah, 14 has, sorry, 4 --

22 THE CLERK: Uh-huh.

23 MS. KING: -- is admitted, it should be admitted.  
24 And this one was not.

25 MS. CHOI: 4 was never admitted.

1 MS. KING: 4 was --

2 THE CLERK: 4 was never admitted, correct. Correct,  
3 because you -- it was marked.

4 MS. KING: All that was testimony. All that was  
5 testimony.

6 MS. CHOI: Right. Right. Right.

7 THE CLERK: Yeah.

8 MS. KING: That's fine.

9 THE CLERK: Okay.

10 THE COURT: All right. Everyone have everything --

11 MS. KING: And actually I think --

12 THE COURT: -- in that you want in?

13 MS. KING: I didn't move this into evidence. I just  
14 think it's, yeah, I don't --

15 THE CLERK: You don't want it in?

16 MS. KING: No.

17 THE CLERK: Okay.

18 MS. CHOI: Why don't you just do that? Why don't you  
19 do that in --

20 MS. KING: I know. It's just been overwhelming.

21 THE COURT: All right. So --

22 MS. KING: Overwhelming, instead of --

23 THE COURT: -- State's 22 is not in evidence.

24 THE CLERK: 27.

25 MS. KING: 27.

1 THE COURT: 27. All right.

2 (Discussion off the record.)

3 THE COURT: All right. Bring in the jury please.

4 (The jury entered the courtroom.)

5 THE COURT: All right, ladies and gentlemen, be  
6 seated please.

7 JURY INSTRUCTIONS

8 THE COURT: Members of the jury, the time has come to  
9 explain the law that applies to this case. The instructions  
10 that I give about the law are binding upon you. In other  
11 words, you just apply the law as I explain it in arriving at  
12 your verdict. On the other hand, any comments that I may make  
13 or have made about the facts are not binding upon you and are  
14 advisory only. You're the ones to decide the facts and apply  
15 the law to those facts.

16 The verdict must be the considered judgment of each  
17 of you. In order to reach a verdict, all of you must agree, in  
18 other words, your verdict must be unanimous. You must consult  
19 with one another and deliberate with a view to reaching an  
20 agreement if you can do so without violence to your individual  
21 judgment. Each of you must decide the facts for yourself, but  
22 do so only after an impartial consideration of the evidence  
23 with your fellow jurors.

24 During deliberations, do not hesitate to re-examine  
25 your own views. You should change your opinion if convinced

1 you are wrong, but do not surrender your honest belief as to  
2 the weight or effect of the evidence only because of the  
3 opinion of your fellow jurors or for the mere purpose of  
4 reaching a verdict.

5           The defendant is presumed to be innocent of the  
6 charges. This presumption remains throughout every stage of  
7 the trial and is not overcome unless you are convinced beyond a  
8 reasonable doubt that the defendant is guilty. The State has  
9 the burden of proving the guilt of the defendant beyond a  
10 reasonable doubt. This means that the State has the burden of  
11 proving beyond a reasonable doubt each and every element of the  
12 crimes charged.

13           The elements of a crime are the component parts of  
14 the crime about which I will instruct you shortly. This burden  
15 remains on the State throughout the trial. The defendant is  
16 not required to prove his innocence. However, the State is not  
17 required to prove guilt beyond all possible doubt or to a  
18 mathematical certainty, nor is the State required to negate  
19 every conceivable circumstance of innocence.

20           A reasonable doubt is a doubt founded upon reason.  
21 Proof beyond a reasonable doubt requires such proof as would  
22 convince you of the truth of a fact to the extent that you  
23 would be willing to act upon such belief without reservation in  
24 an important matter in your own business or personal affairs.  
25 If you are not satisfied of the defendant's guilt to that

1 extent for each and every element of a crime charged, then  
2 reasonable doubt exists and the defendant must be found not  
3 guilty of that crime.

4           You must consider and decide this case fairly and  
5 impartially. You are to perform this duty without bias or  
6 prejudice as to any party. You should not be swayed by  
7 sympathy, prejudice or public opinion.

8           Doing your, during your deliberations you must decide  
9 this case based only on the evidence that you and your fellow  
10 jurors heard together in the courtroom. You must not do any  
11 outside research or investigation. Do not use any outside  
12 sources such as books, electronic devices, computers or phones  
13 to do research about this case even if you believe the  
14 information would be helpful.

15           While you're deliberating, you cannot have in the  
16 jury room any computer, cell phones or other electronic devices  
17 and you must not communicate with anyone outside the jury room.  
18 If there are breaks in deliberations, I may allow you to  
19 communicate with your family or friends, but do not communicate  
20 about the case or your deliberations.

21           In making your decision, you must consider the  
22 evidence in this case, that is, testimony from the witness  
23 stand and physical evidence or exhibits admitted into evidence.  
24 In evaluating the evidence, you should consider it in the light  
25 of your own experiences. You may draw any reasonable

1 conclusion from the evidence that you believe to be justified  
2 by common sense and your own experiences.

3           The following things are not evidence and you should  
4 not give them any weight or consideration, any testimony that I  
5 struck or told you to disregard and any exhibits that I struck  
6 or did not admit into evidence. You should also disregard  
7 questions that the witnesses were not permitted to answer and  
8 objections of the lawyers. When I did not permit the witness  
9 to answer a question, you must not speculate as to the possible  
10 answer. If after an answer was given I ordered that the answer  
11 be stricken, you must disregard both the question and the  
12 answer.

13           Opening statements and closing arguments of lawyers  
14 are not evidence. They are intended only to help you to  
15 understand the evidence and to apply the law. Therefore, if  
16 your memory of the evidence differs from anything the lawyers  
17 or I may say, you must rely on your own memory of the evidence.

18           There are two types of evidence, direct and  
19 circumstantial. An example of direct evidence that it is  
20 raining is when you look out the courthouse window and see that  
21 it is raining. An example of circumstantial evidence that it  
22 is raining is when you see someone come into the courthouse  
23 with a raincoat and umbrella that are dripping water. The law  
24 makes no distinction between the weight to be given to either  
25 direct or circumstantial evidence. No greater degree of

1 certainty is required of circumstantial evidence than of direct  
2 evidence.

3           In reaching a verdict, you should weigh all of the  
4 evidence presented whether direct or circumstantial. You may  
5 not convict the defendant unless you find the evidence, when  
6 considered as a whole, establishes his guilt beyond a  
7 reasonable doubt.

8           The State and the defense have agreed as to the  
9 admissibility of the chain and, chain of custody and inventory  
10 sheet. The list of items on the attached of chain of custody  
11 and inventory sheet were collected from the residence of Abe  
12 Mallik, 1710 Canal Clipper Court, Point of Rocks, Frederick  
13 County, Maryland, by Deputy First Class Gary Marriotti  
14 (phonetic sp.) during the search warrant on April 21, 2016.  
15 These items were properly secured at the Frederick County  
16 Sheriff's Office located at 110 Airport Drive East, Frederick,  
17 Maryland. These are the same items that were made available to  
18 Steven Gibson of Homeland Security for forensic examination.

19           On Item No. 3, a typo exists on the micro-center  
20 receipt dated 3/21/16, an Acer PC. The parties agree that the  
21 correct price is \$211.99, not \$21.99, as stated. The 85  
22 attached photographs were taken by Deputy Gary Marriotti during  
23 the search warrant of the residence of Abe Mallik, 1710 Canal  
24 Clipper Court, Point of Rocks, Frederick County, Maryland on  
25 April 21, 2016. These photographs are fair and accurate



1 depictions of what Deputy Gary Marriotti observed on that day.

2           In response to a court order, the Frederick County  
3 Sheriff's Office received the following certified business  
4 records: Comcast, Google, Yahoo, Microsoft, Fast-Serv, and  
5 hidemyass.com. The defense stipulates to the attached State  
6 exhibit, Cyber tip line report 8588030. The State stipulates  
7 to the following defense exhibits: Defense witness Mark  
8 Johnson's curriculum vitae; defendant Abe Mallik curriculum  
9 vitae; February 27, 2014, and March 6, 2014, fully executed  
10 settlement agreement; Comcast account notes regarding two  
11 service calls on February 12, 2016; March 26, 2016 receipt for  
12 Malwarebytes anti-malware premium order; FTC v. Asus lawsuit  
13 summary; man.maryland@gmail.com Craig's List ad posting. These  
14 facts are not now in dispute and should be considered proven.

15           You are the sole judge of whether a witness should be  
16 believed. In making this decision, you may apply your own  
17 common sense and life experiences. In deciding whether a  
18 witness should be believed, you should carefully consider all  
19 the testimony and evidence, as well as whether the witness's  
20 testimony was affected by other factors. You should consider  
21 such factors as the witness' behavior on the stand and manner  
22 of testifying, whether the witness appeared to be telling the  
23 truth, the witness' opportunity to see or hear the things about  
24 which testimony was given, the accuracy of the witness' memory,  
25 whether the witness has a motive not to tell the truth, whether

1 the witness has an interest in the outcome of the case, whether  
2 the witness' testimony was consistent, whether other evidence  
3 that you believe supported or contradicted the witness'  
4 testimony, whether and the extent to which the witness'  
5 testimony in court differed from the statements made by the  
6 witness on any previous occasion and whether the witness has a  
7 bias or prejudice.

8           You're the sole judges of whether a witness should be  
9 believed. You need not believe any witness even if the  
10 testimony is uncontradicted. You may believe all, part or none  
11 of the testimony of any witness.

12           There has been expert testimony in this case. An  
13 expert is a witness who has knowledge, skill, experience,  
14 education or special training in a given field. You should  
15 consider an expert's opinion together with all the other  
16 evidence. In weighing the opinion of an expert, in addition to  
17 the factors that are relevant to any witness' credibility, you  
18 should consider the expert's knowledge, skill, experience,  
19 training or education as well as the expert's knowledge of the  
20 subject matter about which the expert is expressing an opinion.

21           You should give expert testimony the weight and value  
22 you believe it should have. You are not required to accept any  
23 expert's opinion. The weight of the evidence does not depend  
24 upon the number of witnesses on either side. You may find that  
25 the testimony of a smaller number of witnesses for one side is

1 more believable than the testimony of a greater number of  
2 witnesses for the other side.

3           Intent is a state-of-mind and ordinarily cannot be  
4 proven directly because there is no way of looking into a  
5 person's mind. Therefore, a defendant's intent may be shown by  
6 surrounding circumstances. In determining the defendant's  
7 intent, you may consider the defendant's acts and statements,  
8 as well as the surrounding circumstances. Further, you may,  
9 but are not required to, infer that a person ordinarily intends  
10 the natural and probable consequences of his acts.

11           The defendant is charged with possession of child  
12 pornography in violation of the Criminal Law Article Section  
13 11-208(a). In order for the defendant to be found guilty of  
14 that charge, the State must prove the defendant knowingly  
15 possessed and retained a photograph or photographs showing an  
16 actual child under the age of 16 years engaged as a subject in  
17 a sadomasochistic abuse, engaged in sexual conduct or in a  
18 state of sexual excitement. Knowingly means having knowledge  
19 of the character and content of the matter. Sadomasochistic  
20 abuse means fladulation or torture committed by or inflicted on  
21 an individual who is nude, wearing only undergarments or  
22 wearing a revealing or bizarre costume, or binding, fettering  
23 or otherwise physically restraining an individual who is nude,  
24 wearing only undergarments or wearing a revealing or bizarre  
25 costume.

1           Sexual contact means human masturbation, sexual  
2 intercourse or whether a loan or with another individual or  
3 animal any touching of or contact with the genitals, buttocks  
4 or pubic areas of an individual or breasts of a female  
5 individual. Sexual excitement means the condition of the human  
6 genitals when in a state of sexual stimulation, the condition  
7 of the human female breasts when in a state of sexual  
8 stimulation or the sensual experiences of individuals engaging  
9 in or witnessing sexual contact or nudity.

10           Now, ladies and gentlemen, in a moment you'll hear  
11 closing arguments, all right? The State will go first because  
12 the State has the burden of proof. Then the counsel for the  
13 defendant will make a closing argument, and then because the  
14 State has the burden of proof, the State may come back and make  
15 closing argument in rebuttal of the defense argument.

16           Now, ladies and gentlemen, when you go back to the  
17 jury room, you are, of course, to deliberate with the goal of  
18 reaching a unanimous verdict. Many times when jurors go to the  
19 jury room, they have a question for the Court. If you have a  
20 question, write it on a piece of paper and give it to the jury  
21 bailiff who will bring it to me. Now that slip of paper that  
22 you write it on will be kept in the court file so that if there  
23 is an appeal, then the question will be part of the court  
24 record.

25           Do not ask why certain evidence was not introduced in

1 the case. Do not ask for more evidence. The phase of this  
2 trial where evidence can be introduced is over. The evidence  
3 that is before you now is the evidence in this case.

4 No one will have any contact with you who is not on  
5 the jury, except the bailiff. If you have a question and you  
6 give him a note to give to the Court, and you're not to have  
7 any contact with the bailiff other than that, except to advise  
8 him that you have reached a verdict in the case. If you reach  
9 a verdict, you will then be directed back into the courtroom.

10 Ladies and gentlemen, I want to thank you for your  
11 attention during this trial. There was a lot of evidence, much  
12 of it technical, and I commend you for paying close attention  
13 to what has transpired.

14 Ms. King.

15 MS. KING: Thank you, Your Honor. If I may approach  
16 Madam Clerk to retrieve some exhibits?

17 CLOSING ARGUMENT BY JOYCE KING, ESQ.

18 ON BEHALF OF THE STATE

19 Ladies and gentlemen of the jury, Galileo said that  
20 all truths are easy to understand once they've been discovered,  
21 the point is, is to discover them. And that is exactly what we  
22 have done throughout this trial is discover the truth about the  
23 defendant, Abe Mallik, the truth that he has a sexual interest  
24 in young children and that is why he possessed 11 images of  
25 child pornography.

1           The State is going to begin with reviewing the  
2 elements of the crime. As to Counts 1 through 8, and those are  
3 the images that were on the defendant's e-mail, that is Exhibit  
4 No. 9. There is no question that each of these images are  
5 children engaged in sex acts. There is no evidence to the  
6 contrary. It's an undisputed fact that these images are, in  
7 fact, child pornography.

8           What the defendant contends is the knowingly, and  
9 Your Honor just advised that knowing means knowledge of content  
10 and character and that you can use both direct and  
11 circumstantial evidence, which we have plenty of. And as to  
12 that first eight counts, what do we know? We have the business  
13 records that the defense stipulated to, that these are  
14 authentic, these accounts belong to the defendant.

15           What else do we have? We have his IP addresses that  
16 go directly to either his home or his virtual private network,  
17 which we know is his home. You have the log-in times to look  
18 at, the consistency, the times, the dates of which he's  
19 accessing these accounts.

20           What else do we know? We know that the defendant  
21 did, in fact, purchase Hide My Ass. We know that the defendant  
22 did, in fact, create these accounts by his own admissions. We  
23 know that these e-mails were sent to his callmetim@yahoo and by  
24 looking at those IP addresses, you know that he logged on that  
25 day. You also know that he logged in 100 times after that day,

1 that this defendant possessed these counts. As to -- and  
2 recall the IP addresses, the times the e-mail is sent, the e-  
3 mails received.

4 As to Counts 8 through 11, these are the images that  
5 were contained on the defendant's laptop. Again, this is  
6 State's Exhibit 15 and there is no question that this is child  
7 pornography, that these are children engaged in sex acts.

8 To the issue of knowingly possessed, what do we know?  
9 We know that by the testimony of Mr. Gibson that these folders  
10 were manually created under deputygod. The defendant admitted  
11 he was, he created that account. That account was an  
12 administrator account that had installation capabilities. That  
13 he installed programs on that account and he accessed this  
14 account. We have over 100 log-ins into that account under that  
15 user name.

16 These folder structures, Detective Gibson stated, and  
17 the contents of them are consistent with the contents that were  
18 in his e-mail. The labeling, the timeframe, the series that  
19 Detective Gibson testified to, this is consistent with an  
20 individual who possessed his child pornography.

21 Let's talk now about the testimony that you heard.  
22 Before I move on, you also know that these images were viewed  
23 and accessed. We talked about the link files, the MRU files,  
24 the thumb cache files. You saw the other images that were  
25 contained in those folders. You saw the e-mails that, with

1 minor children, the testimony that came in that Detective  
2 Snyder was able to confirm the age of one of those females as  
3 12 years old. This is consistent with someone who collects  
4 child pornography.

5           Let's talk about credibility. Let's begin first with  
6 the defendant who wants you to believe in an elaborate  
7 conspiracy, but has no proof. You have the defendant's  
8 statements that he saw this unknown device, but there's no  
9 proof. You then have statements that his, he didn't install  
10 Hide My Ass, but there's no proof of that.

11           Does that make sense to you that someone who saw an  
12 unknown device immediately purchases a program to allegedly  
13 hide his network and the he stalls on installing it for over a  
14 month when he describes it as feeling burglarized? An  
15 individual who is meticulous and detailed and thorough, but  
16 can't remember his iPad password? An individual that  
17 identifies himself as a whistleblower, but after the suspicious  
18 activity doesn't call the police?

19           You have an individual that contacts Asus and Comcast  
20 after a search warrant and doesn't mention an unknown device.  
21 You have an individual that after the search warrant, and  
22 knowing what he's been charged with, then purchases a new  
23 router. How convenient.

24           You have a defendant whose next door neighbor is an  
25 expert in cyber security. How convenient. He uses, the day of



1 the search warrant, he uses technical terms, I had an intrusion  
2 on my network. Ladies and gentlemen, he already knew why they  
3 were there and he was already plotting his defense. This is a  
4 man with many, many excuses.

5           You heard from, a long testimony from the defense  
6 expert today, Mr. Johnson, who, yes, has a lot of experience  
7 and qualifications in cyber security, but has no qualifications  
8 as to the forensic examination of an intrusion, has not  
9 evidence, did not look at a single piece of hardware. What he  
10 does is speculates, and he said it himself, he based his  
11 opinion on the defendant's statements. So for you to give any  
12 weight and credibility to what that expert says, you have to  
13 believe that, one, there was an unknown device, which there's  
14 no proof of.

15           And, two, Mr. Johnson also concedes, yes, he gave you  
16 a long explanation as to this FTC v. Asus lawsuit, but what  
17 were the two questions that I asked him? The two issues with  
18 the Asus router was, one, allowing an admin to remain as an  
19 admin and not password protected, and we know through the  
20 defendant's own testimony that his router was, in fact,  
21 password protected. And, two, and you have the articles to  
22 reads, the other issue was this use of the Cloud and you heard  
23 testimony and the defendant admitted there was no evidence that  
24 he used that Cloud, no testimony that he used that Cloud. That  
25 router was not vulnerable. It was as vulnerable as the phones

1 in your pocket, as vulnerable as any other router and any other  
2 device that connects to the Internet by the admission of their  
3 own expert.

4           And who did you hear from the State? Detective  
5 Snyder and, and Ms. Choi made a big deal about him just  
6 delaying the process and alluded to him, why is he meeting,  
7 returning property back to the FDA that belongs to the FDA and  
8 muddying the waters. Detective Snyder reviewed business  
9 records that they've already stipulated to, so we know that  
10 there's no issue with those business records. And he reviewed  
11 contents in that e-mail that he described to you that you have  
12 images of. And you see the pattern that the defendant e-mails  
13 himself. You see through the images that Mr. Gibson finds, the  
14 e-mails match, those images match the girls on his laptop.  
15 This is the same user. This is the same defendant possessing  
16 these images.

17           Then you heard from Mr. Gibson and Mr. Gibson is the  
18 absolute anchor for what we are here for. There is a lot of  
19 noise, you've heard a lot of noise about civil lawsuits, about  
20 the probabilities of being hacked. Mr. Gibson finds the actual  
21 child pornography. Mr. Gibson described to you the nature, the  
22 industry of child pornography. He described to you that it's  
23 not uncommon for someone to just have it on one device. It's  
24 not uncommon for people to download and share and delete these  
25 images. And he said it himself, Mr. Gibson said it's hard to

1 catch smart individuals and we know the defendant is incredibly  
2 intelligent, but he wasn't fast enough covering up his tracks  
3 and that's what you've been hearing, an individual who is now  
4 trying to cover up his tracks.

5           Finally, you heard from Mr. Dickson. Mr. Dickson is  
6 an international, not just national, has international  
7 experience in intrusion. And he told you that there is no  
8 evidence of an intrusion, unequivocally. Counsel tried to say  
9 that he didn't talk to the defendant, but what about the  
10 router? And I said in light of that, in light of everything  
11 the defendant said, his entire defense, does that change your  
12 opinion? No. There was no intrusion.

13           Ladies and gentlemen, the State has proved to you  
14 beyond a reasonable doubt that this defendant knowingly  
15 possessed these images. Now I'm going to have another  
16 opportunity to come back up here and explain to you why.

17           THE COURT: Ms. Choi.

18                   CLOSING ARGUMENT BY SUN CHOI, ESQ.

19                           ON BEHALF OF THE DEFENDANT

20           Thank you, Your Honor. Ladies and gentlemen of the  
21 jury, thank you really for all of your time and your patience  
22 and your attention to this case. We're at the time where it's  
23 about over and we're going to say goodbyes and not see each  
24 other, so a little bit more of your attention is greatly  
25 appreciated.

1           The State said in the opening argument, opening  
2 statement, that this is a very simple case. It's not a simple  
3 case and that's what I said. It's a simple case when you start  
4 cherry-picking a set of facts to fit some kind of theory, the  
5 conclusion that the State wants you to go to, which is Mr. Abe  
6 Mallik is guilty beyond a reasonable doubt of knowingly  
7 possessing child pornography.

8           The set of facts that they want to use is tied up in  
9 a very nice box, wrapped in a very beautiful gift wrap and with  
10 a little bow on it and on a silver platter because what they  
11 do, what the State has tried to show, is that they're using  
12 documents and analysis and forensics and that's really going to  
13 actually prove to you beyond a reasonable doubt that this man  
14 is guilty of knowingly possessing child pornography. So I'm  
15 going to dumb it down a little bit to my level, the human  
16 level, and I'm going to tell you that's not the only set of  
17 facts that you all should consider to get to the truth.

18           The other set of facts is that life is complicated.  
19 Things happen. We cannot control what other people do to us  
20 and how they respond to us. So I told you in opening  
21 statements that this is a complicated case.

22           We heard from three experts and they made it even  
23 more complicated. This case is disgusting, the whole nature of  
24 it is disgusting. It's extremely uncomfortable, but this case  
25 is about how Abe Mallik was already found guilty and is

1 fighting for his life to prove his innocence.

2           This case is about punishment and retaliation by a  
3 very vindictive supervisor because Abe is fighting for his  
4 rights in his job place where he's allowed to and he told the  
5 truth. He was a whistleblower. That lawsuit proves that fact.  
6 We don't have to like him, we have to find out if he's actually  
7 guilty beyond a reasonable doubt.

8           There was evidence that proves motive. James Sawyer  
9 hates Abe Mallik. You see it in the exhibit, in the e-mails  
10 that he sent on February the 11th. That is actually a summary  
11 of everything that's happened to Mr. Mallik between October  
12 2015 and February 2016.

13           We have here on March 6, 2014, where Mr. Mallik has  
14 essentially settled with his employer. They paid him \$51,441  
15 for racial discrimination. Between October 2015 and 2016, Abe  
16 has problems at work. It is nearly every single day. He's  
17 even screamed at and almost threatened. You'll see the  
18 exhibits that actually back-up all of the problems that start  
19 October 2015 through February.

20           Then on February 2016, he notices a foreign device.  
21 The State can't disprove that. He took the oath to testify  
22 under oath to tell the truth, looked at, looked at everyone in  
23 the eye and said there was a foreign device on my home Wi-Fi  
24 network. On February 11, 2016, that e-mail is sent.

25           On February 12, 2016, he notices how incredibly slow

1 his web pages are loading, so he calls Comcast. This is before  
2 any charges, any activity with regard to any of the child  
3 pornography.

4 Then on February 23rd, we find out, it's made public,  
5 that Asus has been involved in a lawsuit where their routers  
6 are known to be defective. The tags that actually appear in  
7 that lawsuit in the articles say consumer deception, consumer  
8 protection, privacy breaches, all of that, and we know that  
9 hacking is a multi-billion dollar industry, not million,  
10 billion. So we date back to 2014 where Asus has a lawsuit on  
11 their hands from the Federal Trade Commission.

12 That's the router that Mr. Mallik had. Our expert,  
13 Mark Johnson, said he understood that it was secured and  
14 password protected, but that doesn't stop a hacker. That  
15 doesn't stop somebody from being able to go into a vulnerable  
16 router and do what they need to do.

17 On 3/21, 2016, Mr. Mallik buys his Acer laptop  
18 because he told you he's losing his vision. He can't really  
19 see well. He installs the privacy HBN within two days of  
20 purchasing his Acer laptop because he believed that the HMA was  
21 dedicated to one device and that's why I cross-examined  
22 Detective Snyder and said, in fact, one license, one purchase  
23 can allow you to use two devices. And he said that's what the  
24 website supports, yes.

25 But if you use two devices on that one license,

1 you're going to get two different IP addresses. So then I said  
2 can you read a little bit further? Yes. And he read a little  
3 bit further and he actually asked the question that was written  
4 on the support page, can multiple devices use one license? And  
5 it says, yes, if you have a router that can be configured,  
6 which the Asus can, obviously, when it's vulnerable and has  
7 known vulnerabilities, then you can use as many devices as you  
8 want and you'll get to that one IP address. That's Detective  
9 Snyder telling you that.

10 March 26, why is that significant? It's significant  
11 because he only purchased the Acer laptop five days prior and  
12 all of a sudden he has 200 unwanted programs and he doesn't  
13 understand why. So that's why he purchases the Malwarebytes,  
14 scans it and wipes his computer.

15 Then on April 21st, he's raided. Every single device  
16 is taken that he owns, a list of passwords are taken. If you  
17 see his passwords, that list, it has Fidelity accounts, PNC  
18 accounts, bank accounts, it has everything. He told you that  
19 he had misplaced that iPad and hadn't used it, so he didn't  
20 remember the password, but he was trying really hard because  
21 Detective Snyder sought communications between my client,  
22 myself and, and, and Detective Elrod with regard to try this  
23 password, try this password. If not, try this one. He was  
24 cooperating the entire time.

25 At no time did he say that's not my e-mail address,

1 that's not my e-mail address at Yahoo or Gmail, that is not --  
2 I'm not disputing the log-ins. If that's what the business  
3 accounts say, that's fine. I'm not disputing any of that. He  
4 has never said that's not what I own. Those are accounts,  
5 those are e-mails that I am associated with.

6           What he did deny was I never saw porn, the child  
7 pornography. I didn't see the child erotic pictures. I didn't  
8 view them. I didn't possess them. I didn't upload them. I  
9 didn't send them. That's not mine. And he's trying to explain  
10 to you just what happened, not conjecture. These are facts  
11 that are happening to him.

12           And the day after the raid, which is the most  
13 troubling part of all, because this case wasn't actually filed  
14 until November of 2016, seven months later, which was prompted  
15 by my annoying letter to the lead detective. That's what  
16 prompted Detective Snyder to actually look at the evidence. He  
17 was assigned in July of 2016. He did nothing, absolutely  
18 nothing at all.

19           Abe Mallik's router died within days after the raid.  
20 He brought that dead router at a voluntary interview and  
21 Detective Snyder testified he physically gave to Detective  
22 Elrod the router. It's dead, take it. Detective Router  
23 refused and he said, once you unplug a router, all the data is  
24 gone. You heard from experts, no, the data is not gone. If  
25 the light goes out, you lose electricity, do you go back to



1 your router and then you have to put everything back together  
2 again? No, it, it comes back to life. It has the information.  
3 The data is not lost.

4           The State's expert, rebuttal expert, to dispute every  
5 single thing that Mark Johnson said, that's his job to dispute  
6 every single fact, said, no, you don't lose everything on the  
7 router. So the State lost an opportunity to take a key piece  
8 of evidence when Mr. Mallik came voluntarily with it, signed  
9 away his rights to remain silent and said I will do whatever  
10 you need me to do. Here's the router, you take it. Here's  
11 everything I've got, take it.

12           And you know what they did? They cherry-picked.  
13 They cherry-picked pieces of evidence that fit really nicely  
14 into this one little box, this little gift that they want to  
15 give to you on a silver platter to get you to a place where  
16 he's supposed to be guilty beyond a reasonable doubt. That's  
17 not going to work because he is presumed to be innocent and  
18 it's very difficult to explain how that, what that really  
19 means. So let me do a little bit of role reversal.

20           Put yourselves in Mr. Mallik's seat. Imagine  
21 yourself, I'm your lawyer and I'm fighting for your life. I'm  
22 really fighting. I'm trying really hard. Let Mr. Mallik be in  
23 your seat listening, observing, thinking about everything.  
24 Would you want the State's set of facts to prove that you are  
25 guilty beyond a reasonable doubt or would you want this

1 annoying attorney to try to present the entire set of facts no  
2 matter how difficult it is to reconcile. That Hide My Ass, and  
3 I'm going to say it out loud, Hide My Ass, what person who is  
4 charged with child pornography or possession of is going to buy  
5 software that says Hide My Ass?

6           You heard from Mark Johnson, there's a ton of VPNs  
7 that he could have chosen from, but the very, the most popular  
8 one is HMA. That's the one that pops up because a search  
9 engine, they pay for it. They're the reasons why the Sony  
10 breach occurred. They're the ones that are involved with the  
11 router. The two suspects in this case are the same suspects in  
12 the Sony breach case.

13           So this HMA is purchased apparently August 2015. Mr.  
14 Mallik has no knowledge of that. He thought, he knows he  
15 searched for it, he wrote Google searches for height. That  
16 came up. He purchased it on February 9, 2016. He put in all  
17 the information there. He even brought the receipt, gave it to  
18 Detective Elrod and said, here. So the exhibit that you all  
19 are getting is from Mr. Mallik. They didn't get the receipt  
20 from anywhere else. Mr. Mallik turned it over and he said I  
21 don't know what that date is. He could have ripped it up. He  
22 believed that February 9, 2016, was the date he purchased it  
23 because he was putting that information in.

24           And you heard from Mark Johnson, when you do stuff  
25 online, things come up, credit card information comes up, all

1 of it comes up, so he just put in his information, he didn't  
2 realize he was registering the actual software on February the  
3 9th. He thought he was purchasing it.

4           And then the State makes a big to do about why do you  
5 wait so much time when you purchased this software to protect  
6 yourself and you're being, and you have an intrusion in your  
7 home. Mr. Mallik told you why. He thought it was one license.  
8 He was going to get a new laptop, he couldn't get that offer  
9 for \$211.99 for a nice, big, bless you, 17-inch Acer laptop.  
10 The man knows his price. So if you're talking about  
11 meticulous, he knows every single term, like every single price  
12 that he paid for certain things. That's who he is, but there's  
13 certain things that he doesn't have to scrutinize.

14           He didn't know that if a router dies that you have to  
15 call the police. He didn't know that. He knows it now because  
16 I asked him, what are you going to do when your router dies  
17 next time? I'm going to call the police.

18           Ladies and gentlemen, when you start cherry-picking  
19 all these little pieces of evidence and you get to a place  
20 where it's just very convenient, would you like to be sitting  
21 in that hot seat? Would you like to be the one listening to a  
22 half set of facts and being told that you have an elaborate  
23 conspiracy theory and be told that your expert doesn't know  
24 what he's talking about because he's a neighbor and it's so  
25 convenient?

1           Thank God Mr. Mallik has a neighbor who was willing  
2 to come to court without payment, no promise of payment, they  
3 never talked about it. He took his time because after a  
4 conversation with his wife, he knew that he had to help this  
5 man because something was wrong and this is his expertise, this  
6 is the field that he's in and he gave you the report based on  
7 the information he had at the time. He corrected some mistakes  
8 because of the information that he was provided. And after all  
9 of that, I asked him, you've heard testimony, you sat here, you  
10 listened to the forensic expert, does that change anything  
11 about your conclusion that this was a hack? And he said, no,  
12 it doesn't.

13           You can't just do half of your job. If the State's  
14 rebuttal witness, the expert rebuttal witness whose, whose job  
15 today was to refute what Mark Johnson was going to testify to,  
16 if he's the one that says the very first thing I do in the  
17 process of coming to a conclusion is to talk to the people that  
18 are involved. Mr. Mallik signed away his Constitutional right  
19 to not make statements. He came in voluntarily before any  
20 charges were filed. Charges weren't filed until November.

21           They had his phone number, e-mail address, they  
22 certainly had mine. They could have called him up and said,  
23 can I talk to you about what really happened, tell us some  
24 background information, but they didn't do that. That's the  
25 first step of the analysis that he talked about which he didn't

1 do.

2           What else didn't he do? The second step. Why?  
3 Because the evidence is gone. When Detective Elrod rejected  
4 the Asus router, that evidence was gone because he told Mr.  
5 Mallik, okay, we don't need it. It's no good to us, the data  
6 is gone. Mr. Mallik believed it, so he traded it in for the  
7 new one, the very same one because now after all the research  
8 he can configure all of the tweaks, he's done the firmware, all  
9 the updates because it is actually a great router. You heard  
10 from Mark Johnson. He has the same one. You just have to  
11 tweak it to make sure that you're secure.

12           Ladies and gentlemen, this case isn't simple. It  
13 never was. It was only simple to the State because they want  
14 you to come to one conclusion. Life is never simple. Life is  
15 full of colors. He needs you to understand that there is  
16 another set of facts and regardless of how it sounds in terms  
17 of a conspiracy theory or what, they're just the facts. He got  
18 suspended, he's fighting for his rights to go back to his job,  
19 but he can't. With this case over his head, he just can't.  
20 The very person that actually suspended him is the person that  
21 he's whistleblowing on.

22           You don't have to like Mr. Mallik, you really don't,  
23 but we do need to give him an opportunity to prove to you that  
24 the State hasn't met its burden to make him guilty beyond a  
25 reasonable doubt. You'll see the receipts of the new router,

1 you'll see the kind of job that the officers did. If your life  
2 was on the line and you could potentially go to jail for 55  
3 years, which is what he's facing, would you want your officer  
4 to be doing this and coming to court pretending to be ready to  
5 go? This is his very first case.

6 This is Detective Snyder's very first case in a child  
7 pornography matter. He's training and training, and I think  
8 that really explains what was going on here. He kept saying I  
9 was in a, a training program and I'm going to go to another  
10 training program in all the month of June. It's mandatory.  
11 I'm going to training.

12 Well, guess what, while you were training, the life  
13 train was passing by, you weren't doing anything to investigate  
14 Mr. Mallik's case and that's why this annoying attorney had to  
15 write a letter and say, what is going on? He's given you  
16 everything he's got. And that's when he starts, uh-oh, let me  
17 investigate and see what's going on.

18 What is this? It could be anything. You can't even  
19 read this evidence. And that's what shocks me the most is that  
20 he's facing so much time in jail and this is the information  
21 that they want to give you and then they want, they want the  
22 experts to come in and give you the very pretty, digital  
23 examination forensic analysis and say he's guilty because --  
24 just ignore this stuff, human error I guess or bad focus, bad  
25 camera, whatever it is.

1           But here's the forensic examination that report and  
2 analysis, this proves him guilty. You know what, let's all  
3 factor in the human element in how this case got investigated  
4 and how we got here. If you don't factor in that part, then,  
5 yeah, he looks very guilty, but we have witnesses for the very  
6 reason why, before we put someone in jail and ruin his life,  
7 somebody who has never been arrested, charged, convicted, had  
8 nothing to do with, even a serious traffic offense, we can't do  
9 half-assed jobs and think that's going to fly. Just because  
10 you're an over-zealous detective on your very first case, you  
11 don't come to court dressing very nicely and not remember if  
12 you plugged in an iPad to see if it works or not. How do you  
13 not remember these things? And they're important because  
14 somebody's life is on the line and he has to prove himself  
15 innocent because everyone is already thinking he's guilty.

16           This is a man who had no priors, no criminal justice  
17 interaction and all of a sudden he's out of a job, his wife and  
18 daughter devastated, his friends can't even look at him. He  
19 had a neighbor who didn't really want to be involved until he  
20 saw the proof in the pudding in the police report and thought,  
21 I've got to do something.

22           Then he knows me. I'm the last point. And so  
23 there's a lot of burden on my part to help this man. And so  
24 when you go back to deliberate, I know that you're going to  
25 say, well, there's a scan and there's no results on malware.

1 Mr. Johnson explained why. Some of these programs are not 100  
2 percent proof. They're just not. He is in the business of  
3 knowing hackers and what they do to change the rules of the  
4 game. He said very clearly if the malware is in the program  
5 versus a memory, if a device is unplugged, the memory malware  
6 is deleted automatically. That's what was going on here, not  
7 the program. There's a difference. I don't really understand  
8 it, I just wrote it down and I'm just telling you, but that's  
9 what he said, and I'm hoping and praying that you understand it  
10 more than I do.

11           These log-ins, the, the, the 1,600 pages that the  
12 Special Agent Dickson brought in, I kind of want you to see  
13 what it is because it's just numbers. It's just long numbers  
14 of gibberish that no one, he could make it whatever he wants,  
15 but for the fact he seemed very nice and honest. But he told  
16 you, I didn't interview the defendant. I didn't get the router  
17 data. It's only half of what he did.

18           Mr. Johnson doesn't need to actually have the  
19 hardware. He doesn't need to do that. He can make an  
20 assessment. He told you why and he told you how. He said  
21 based on all of the information that he has been provided with  
22 the forensic reports and explaining what all that meant, which  
23 was a little too technical for me, he said it does not change  
24 his opinion that there is an absolute possibility that there  
25 was a hack.



1           Ladies and gentlemen, I know it's, it's a, it's  
2 asking a lot to believe that there is a conspiracy. Maybe  
3 there wasn't a conspiracy, but we do know that there was a  
4 vulnerable router. We do know that there has been activities  
5 that lead up to it. We know that there was somebody that had  
6 the motive and axe to grind with Abe Mallik. They're just  
7 facts.

8           You have the letters. You have the complaints. You  
9 have the lawsuit. Please, as you deliberate, and you consider  
10 this man's life, imagine yourself sitting there and what you'd  
11 want the entire jury to consider before coming back with a  
12 verdict because that's really the important part.

13           I could keep going on with all of the dates that are  
14 involved, but the crucial date is from April 21, 2016, until  
15 November 2, 2016. No charges. That time all Mr. Mallik was  
16 doing was providing information to them. You know what they  
17 did with that? They turned it around and slapped him with  
18 those charges and in that process they got the dates wrong.

19           And Jason Snyder, poor Jason Snyder sitting there,  
20 first time testifying in his life, not in his life, in his  
21 professional life in the child pornography genre, arena, he's  
22 over-zealous, he wants to know get everything done because,  
23 oops, he has to file the application for charges. There's a  
24 big typo, sorry for the clerical error. We figured it out.  
25 You can't be convicted of possessing child pornography when you

1 don't have that computer where the images are found. So the  
2 day before that date gets fixed and he says, oops, my bad.

3           It's the same thing as this. You know, sorry, it's a  
4 little bit out of focus, but you know what, we saw him at the  
5 end of the A picture, so that's good enough, right? If you  
6 were the defendant, if you're fighting for your life, is that  
7 good enough? How long do you think it was going to sit if I  
8 didn't write that annoying letter and send it to him? How long  
9 was he supposed to wait until something was going to happen to  
10 him? How much more information could he give? That's what  
11 we're talking about, witnesses, evidence.

12           There's no source of these photographs, no source  
13 whatsoever. The potential source are the three, 9, 10, 11,  
14 that's it, because that's on the Acer laptop. We can't dispute  
15 that. It's on there. It's how it got there that Mark Johnson  
16 explains that's how it got there, because all of the little  
17 pieces actually mesh.

18           You heard from Detective Snyder, who did very last  
19 minute things. He called Comcast to just verify whether or not  
20 Mr. Mallik called on February the 12th. Oops, he, he actually  
21 called and he had to turn over that exculpatory information,  
22 which you will receive. And then he followed up with Asus.  
23 Oh, those phone numbers and those case files with the Asus tech  
24 back in February, they were in touch with Detective Snyder in  
25 May, right before trial.

1           And then when the router actually dies on April 27th,  
2 they're saying, you're using it to cover your tracks when Mark  
3 Johnson says that's a brick. And I said, what's a brick? And  
4 he said that's when the router dies because the hacker has been  
5 compromised. I'm like can you just say that, in my mind, I  
6 didn't say it out loud, but now I understand what a brick is.  
7 It's dead as a brick. And that's what happened here.

8           I can go on and on about every single thing that  
9 Detective Snyder did not do, but the last point I'm going to  
10 make about Detective Snyder is the exhibit where he had an  
11 unapproved entry. The very last entry of the report, which I  
12 believe may be 43 or 33 pages long, you'll see it, on that  
13 entry it had bold, cap letters, unapproved. All the other  
14 pages approved he said. No problems with that. Oh, okay. It  
15 just takes a little bit longer for a supervisor to look at  
16 everything.

17           But the very last entry of that is, oh, well, he had  
18 a log-in from his home on March the 3rd, so that the State can  
19 support the Counts 1 through 8 at the very least. Now we fix  
20 the date for Counts 9 and 11 so that it's after the Acer's  
21 purchase that, okay, we're good, we're good to go. He can get  
22 convicted on those three counts. Let's make sure, because Hide  
23 My Ass doesn't have any log-ins from Mr. Mallik's computer or  
24 anything else until April, after these images are uploaded.

25           So the last entry puts Mr. Mallik's home to log in

1 through Hide My Ass, upload images. I just doesn't make sense.  
2 It's unapproved. He doesn't know dates, he doesn't know times,  
3 he doesn't know months, he doesn't know, when he figured out  
4 the right date, he doesn't know when he told Madam State who  
5 then acted very quickly and told me.

6           Just think about it. Do you really want somebody who  
7 is half-assed investigating your case when you're sitting at  
8 the defense table, because that's what he had. And all that  
9 clean, nice, pristine, digital examination doesn't really  
10 matter, doesn't make that other sloppy part better, and then  
11 infuse it with the disgusting, graphic, repulsive images where  
12 all of our rationale and reason go out the door makes it really  
13 nice in a box, wrapped in really nice gift paper with a bow on  
14 a silver platter.

15           But, unfortunately, that box is round. They can't  
16 make things fit. I can only give you the entire picture even  
17 if it's inconsistent. We can try to figure out why it's  
18 inconsistent and that's what Mark Johnson did. The hack must  
19 have happened a while ago, maybe in 2014 when he settled the  
20 lawsuit. But we definitely know something happened in August  
21 of 2015 because that was the date of purchase where his credit  
22 card information was used. February 9th is the date he  
23 registered. Who really registers stuff, like when you buy  
24 software, do you just sit down there and register everything?  
25 I, I don't. He thought he was purchasing that software and

1 that's where we are. So, please, remember the presumption of  
2 innocence.

3 In this case, yes, we have instructions that he's not  
4 guilty, but at the same time he feels that he was guilty from  
5 the beginning and had to go backwards and prove that he's  
6 innocent. So we scoured and figured out what is going on to  
7 give you the entire set of facts to put it all in this round  
8 gift container, not in a pretty bow, not on a silver platter,  
9 and have you go through all of this evidence that's very  
10 technical, very complicated and to prove to you that it's not  
11 simple, nothing is simple, that this man is fighting for his  
12 life.

13 I thank you for your attention. I thank you for your  
14 time. And I hope that after you deliberate that there is  
15 reasonable doubt and that you can let him go. Thank you.

16 MS. KING: Counsel, can you move this?

17 (Discussion off the record.)

18 REBUTTAL ARGUMENT BY JOYCE KING, ESQ.

19 ON BEHALF OF THE STATE

20 It's common for the defense to try to muddy the  
21 waters, but you have your notes, you have the testimony, you  
22 have the physical evidence to look at. I'm going to address a  
23 couple of the points that Ms. Choi brought up just to clarify  
24 that what's in evidence.

25 Detective Snyder was not purposefully delaying this.

1 He said these investigations regarding child pornography in  
2 forensic cases take time. They especially take time when  
3 people aren't giving you correct passwords, that several  
4 attempts that you know, you heard from Mr. Gibson, an iPad was  
5 sent to the FBI, to different agencies, and they couldn't open  
6 it. Is everyone lying? Is everyone into this conspiracy? The  
7 entire Federal Government is out to get Mr. Mallik? That's  
8 just not common sense.

9           And we don't need -- Detective Snyder explained that  
10 that last report was unapproved because it was the last report  
11 and he was submitting all this reports and that one hadn't been  
12 approved. It was a procedural thing. And we don't need that  
13 document to prove that that, those e-mails were sent to the  
14 VPN. That evidence is in the business records. Look at the  
15 logs. Look at the cyber tip. We know that that VPN was  
16 associated and admittedly owned by the defendant.

17           Ms. Choi showed you blurry pictures and, of an ID  
18 card that, you know, this, this case was mishandled, but she  
19 can't show you there is no evidence that the forensics were  
20 mishandled. Detective Gibson explained to you how precisely  
21 these images were found. That's the evidence of this case.  
22 That is why we are here.

23           The other things are distractions. She brought up  
24 the router and how it wasn't collected and it was powered off  
25 and she asked our expert, Mr. Dickson, would that clear the

1 memory. He said, no. And then on redirect I said, in light of  
2 that and the defendant's testimony, would that change your  
3 opinion? No. Why? Because he's not, he's looking at hives  
4 and he explained very technically what those were. That  
5 comprises everything. It's comprehensive. If there was an  
6 intrusion, it would have been seen. He testified every case  
7 there is always a trace, always.

8           Ms. Choi brought up Mr. Johnson's testimony about  
9 Sony, how in that case we're dealing with the same type of  
10 malware that Mr. Johnson suspected and even Mr. Johnson's  
11 testimony was that in that case they found the intrusion.  
12 There was trace. That's the defense's own expert in a high-  
13 profile Sony case, which I'm sure are sophisticated hackers.

14           Again, the State asked Mr. Johnson, and made it  
15 clear, he does not do forensic evidence, he cannot prove -- and  
16 Mr. Dickson stated you cannot prove an intrusion without  
17 examining hardware, period. And Mr. Johnson's opinion was  
18 based on assumed facts supplied by this defendant. And I said  
19 if those facts are not true that there was no unknown device,  
20 that there aren't these mysterious 200 malware on the  
21 defendant's laptop that we have no proof of, would that change  
22 your opinion? And he said, yes, of course it would.

23           The defense is portraying the defendant as the victim  
24 of his elaborate conspiracy. The State wants you, wants to  
25 remind you who the real victims are. The real victims are the

1 children in those photos, the industry that Mr. Gibson  
2 described how these are real children being sexually abused and  
3 these images are documented to be traded, to be sold, and the  
4 possession of them is participating in this industry. Those  
5 are the victims.

6           The State has to prove this case beyond a reasonable  
7 doubt and I know that you are all reasonable people. You draw,  
8 and the Judge has instructed you, from your own life  
9 experiences. Most of you have cell phones and laptops and  
10 computers and access to Internet and have, maybe have had  
11 problems with your employers. Is this a reasonable excuse?

12           Mr. Mallik has so many explanations and excuses. He  
13 has an answer for everything. You know why? Because he  
14 researched, researched, researched and prepared.

15           Something Mr. Johnson said I wanted to bring back up  
16 in, in closing. He said if it walks like a duck, it's a duck.  
17 You don't need to look far for the truth. It is simple. They  
18 were in his e-mails, he accessed those e-mails, you can see the  
19 logs. It was in that computer. He was the user. Deputygod is  
20 consistent. Those were manually created, manually saved.  
21 They're in cache files, MRU files. These images were viewed.

22           And even, not just those images, but in the totality,  
23 you want to talk about whole picture, the whole picture, let's  
24 talk about the whole picture of, the picture of the defendant  
25 communicating with minors, pictures of, e-mail, e-mail pictures



1 of minors consistent with the e-mail pictures found in his  
2 laptop, the images of child erotica, the portfolio of children  
3 in various clothing. This is consistent with someone who  
4 possesses child pornography.

5 Ladies and gentlemen, there is no conspiracy. There  
6 is no mysterious hacker. There is only one person to hold  
7 responsible for the possession of child pornography and that's  
8 the defendant. And it may be an uncomfortable truth, it may be  
9 something that no one wants to admit, no one wants to  
10 publicize, this is a secretive, dirty secret, but that's why  
11 he's communicated with those girls, that's why he has those  
12 photos, the reason is is because he possessed those 11 images  
13 of child pornography and the State would ask you to find him  
14 guilty of each and every one of those counts. Thank you.

15 THE COURT: Ladies and gentlemen, first of all, let  
16 me ask Jurors 1 through 12, anyone for any reason who doesn't  
17 believe you can fulfill your obligation to deliberate in an  
18 attempt to reach a verdict? Anyone feeling ill, anyone have  
19 any reason why you can't see this through to the end?

20 (No affirmative response.)

21 THE COURT: All right. With that, I'm going to  
22 excuse Juror No. 13 and 14. We thank you for your service and  
23 there are, and it's happened to me a number of times where  
24 actually we have to call the alternates into service because a  
25 juror has to be excused, someone is ill, whatever. You have

1 sat here like the other 12 jurors for three days and you've  
2 listened and you have participated in this trial and I want to  
3 thank you both very much for your service, all right?

4 UNIDENTIFIED JUROR: Thank you.

5 THE COURT: You can give those to the bailiff.

6 MS. KING: And, Your Honor, if I, if counsel and I  
7 could approach, I do have one matter I do want to bring up  
8 before we release the jury.

9 THE COURT: I'm going to appoint Juror No. 12 as the  
10 foreperson of this jury, all right? When you go back to  
11 deliberate, you will get copies of these instructions, you will  
12 get a verdict sheet and your verdict will consist of written  
13 answers to written questions. Remember, do not write the  
14 answer until all 12 of you are agreed upon your verdict.

15 The verdict sheet, the instructions and, of course,  
16 all of the exhibits which have been entered into evidence, all  
17 right? I'm going to give you a little time this evening to  
18 deliberate and if you haven't reached a verdict, then we will  
19 let you go and we will resume tomorrow morning at -- what time  
20 do you want to start, if that -- 9:30? 10:00?

21 (Discussion off the record.)

22 MS. KING: The same time.

23 MS. CHOI: The earlier, the better.

24 THE COURT: The earlier the better. All right.  
25 We'll say 9 o'clock then.

1 All right. Now I won't be here tomorrow. I will be  
2 sitting in another jurisdiction, however, there will be another  
3 judge here who will take your verdict.

4 All right, ladies and gentlemen, I can't tell you how  
5 much I appreciate your service. From my observation, you've  
6 all been very conscientious, attentive and you've fulfilled  
7 your service just the way we hoped you would.

8 All right, counsel.

9 (Bench conference follows:)

10 MS. KING: Your Honor, the State would request for a  
11 curative instruction. Ms. Choi made reference to 55 years.  
12 The jury should not consider, it's inappropriate to mention the  
13 sentencing in closing.

14 THE COURT: The what?

15 MS. KING: She mentioned that he's facing 55 years.  
16 I'd like a curative instruction that they're not to consider  
17 the penalties that he faced, faces.

18 THE COURT: All right.

19 (Bench conference concluded.)

20 THE COURT: Ladies and gentlemen, one instruction  
21 that I would give you is that your function is to decide the  
22 facts and you should not let the thought of any possible  
23 punishment affect your deliberations, all right? The  
24 sentencing phase in a trial is the jury doesn't have anything  
25 to do with that. So you shouldn't let the thought of any

1 possible punishment influence you in any way at arriving at  
2 your verdict.

3 All right. Madam Clerk, would you swears the bailiff  
4 in?

5 THE CLERK: Raise your right hand.

6 (The bailiff was sworn.)

7 (The jury retired to deliberate.)

8 MS. CHOI: Madam Clerk, can I get a copy of the  
9 exhibit sheet?

10 THE CLERK: Yes.

11 MS. KING: Same.

12 MS. CHOI: Okay.

13 MS. KING: Thank you, Your Honor.

14 MS. CHOI: Thank you so much, Your Honor.

15 THE COURT: All right. I'm going to give them, oh,  
16 let's say until about 6:45. If they haven't reached a verdict  
17 in that time, then I'm going to let them go. Make sure that we  
18 have your, if you're going to leave the courthouse, that we  
19 have your cell number so we can get in touch with you if the  
20 jury comes back.

21 MS. CHOI: Is the courtroom (unintelligible).

22 THE CLERK: The bailiff will be in here.

23 MS. CHOI: Thank you.

24 THE CLERK: Uh-huh.

25 MS. CHOI: (Unintelligible.)

1 THE CLERK: Yeah, you can.

2 THE BAILIFF: All rise.

3 (Recess)

4 THE COURT: Ladies and gentlemen, have you reached a  
5 verdict?

6 THE FOREPERSON: We have not yet reached a verdict.  
7 We're still --

8 THE COURT: All right. I didn't expect you to. I'm  
9 going to release you. Check in downstairs tomorrow morning at  
10 9 o'clock. My trusty law clerk will bring you up and you can  
11 resume your deliberations. And when, if you reach a verdict  
12 tomorrow, then another judge will be here, maybe Judge Rolle,  
13 but I'm not absolutely sure, will be here to take the verdict.

14 Ladies and gentlemen, I really, sincerely thank you  
15 for your hard work and hopefully tomorrow we'll see a  
16 conclusion. Have a good evening.

17 THE JURY: Thank you.

18 (The jury left the courtroom.)

19 THE BAILIFF: All rise.

20 THE COURT: I'm going to give you --

21 (Recess)

22 THE COURT: So at the risk of, well, don't get a big  
23 head over this, but I, I had a judge ask me who the attorneys  
24 were in this case and I, I told that particular judge and the  
25 response I got was that, it was high praise for both of you.

1 So you've lived up to what I was told and I think both the  
2 State and the defendant have been well-represented in this  
3 matter. Have a good evening.

4 MS. KING: Thank you, Judge.

5 UNIDENTIFIED SPEAKER: Thank you, sir.

6 THE BAILIFF: All rise.

7 (The proceedings were concluded.)  
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√ Digitally signed by Tracy Hahn

DIGITALLY SIGNED CERTIFICATE

**DEPOSITION SERVICES, INC.** hereby certifies that the attached pages represent an accurate transcript of the electronic sound recording of the proceedings in the Circuit Court for Frederick County in the matter of:

Criminal No. 10-K-16-059271

STATE OF MARYLAND

v.

ABE ARJUN MALLIK

By:

  
TRACY HAHN  
Transcriber